Exhibit D

Reimbursement Agreement Hearing Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 22-11068 (JTD)
FTX TRADING LTD. *et al.*,	.	
	.	(Jointly Administered)
Debtors.	.	
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. . . . .	.	
	.	
ALAMEDA RESEARCH LLC, FTX TRADING, LTD., WEST REALM SHIRES, INC., AND WEST REALM SHIRES SERVICES, INC. (D/B/A FTX.US),	.	Adversary Proceeding No. 23-50419 (JTD)
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
DANIEL FRIEDBERG,	.	
	.	
Defendant.	.	
	.	
. . . . .	.	
	.	
ALAMEDA RESEARCH LTD., and FTX TRADING LTD.,	.	Adversary Proceeding No. 23-50444 (JTD)
	.	
Plaintiffs,	.	
	.	
-against-	.	
	.	
PLATFORM LIFE SCIENCES, INC., LUMEN BIOSCIENCE, INC., GREENLIGHT BIOSCIENCES HOLDINGS, PBC, RIBOSCIENCE LLC, GENETIC NETWORKS LLC, 4J THERAPEUTICS INC., LATONA BIOSCIENCES GROUP, FTX FOUNDATION, SAMUEL BANKMAN-FRIED, ROSS RHEINGANS-YOO, and NICHOLAS BECKSTEAD,	.	
	.	
Defendants.	.	
	.	
. . . . .	.	(CONTINUED)

FTX TRADING LTD., MACLAURIN INVESTMENTS LTD., f/k/a/ ALAMEDA VENTURES LTD., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- LAYERZERO LABS LTD., ARI LITAN, and SKIP & GOOSE LLC, Defendants.	.	Adversary Proceeding No. 23-50492 (JTD)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES INC., (d/b/a FTX.US), Plaintiffs, v. ALLAN JOSEPH BANKMAN and BARBARA FRIED, Defendants.	.	Adversary Proceeding No. 23-50584 (JTD)
FTX TRADING LTD. and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- MICHAEL BURGESS, HUY XUAN "KEVIN" NGUYEN, JING-YU "DARREN" WONG, MATTHEW BURGESS, LESLEY BURGESS, 3TWELVE VENTURES LTD., and BDK CONSULTING LTD., Defendants.	.	Adversary Proceeding No. 23-50585 (JTD)
	.	(CONTINUED)

FTX TRADING LTD., and MACLAURIN INVESTMENTS, LTD., Plaintiffs, -against- LOREM IPSUM UG, PATRICK GRUHN, ROBIN MATZKE, and BRANDON WILLIAMS, Defendants.	Adversary Proceeding No. 23-50437 (JTD) Courtroom No. 5 824 Market Street Wilmington, Delaware 19801 November 15, 2023 1:05 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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In Propria Persona:
Patrick Rabbitte, Pro Per

Simon Carter, Pro Per

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(Proceedings commenced at 1:05 p.m.)

THE COURT: Good afternoon, everyone. Thank you. Please be seated.

Before we begin, I just need to make sure that our folks who are on the Zoom call -- I made this announcement -- I don't know if I did in this case before, it might have been Mallinckrodt. The Judicial Council has instituted new rules post-COVID for participation remotely in bankruptcy and other Court proceedings. The rule is that if you are not a party to the case, and in a bankruptcy case that would include someone who is a customer, or creditor, or investor, parties who are represented by counsel, you cannot appear and view the video of the proceeding. You can only participate by audio. And if there are witnesses then you have to be off completely. If you want to see the witnesses testify you have to be in Court.

So, with that announcement I know Jermaine made an announcement earlier as well, if you are a member of the press, and we have the login sheet, if you haven't dropped off, we are going to move you into the waiting room for Zoom and you can then dial-in without video to hear most of the proceeding. When a witness testifies you are going to be kicked back out again, and then we will bring you back in after the witness is done. So, you can hear the arguments, you can hear those things, but you can't hear the witnesses

testifying. Those aren't my rules. The Judicial Council set those rules. So, I have to live with them.

So, that is where we are. Go ahead, Mr. Landis.

MR. LANDIS: Good afternoon, Your Honor. May I please the Court, Adam Landis from Landis Rath & Cobb on behalf of the FTX Trading Ltd., debtor and its affiliated debtors.

Your Honor, we have a number of matters going forward this morning:

One matter in the main case at Item No. 11, the amended motion regarding the reimbursement agreement; two matters in the Platform Life Sciences adversary; one matter in the Lorem Ipsum adversary; and one status conference requested by the United States Trustee regarding fee examiner and the emergent debtors.

I will yield the podium to Mr. Glueckstein who will handle Item No. 11 regarding the reimbursement agreements.

THE COURT: Okay. Thank you.

Mr. Glueckstein.

MR. GLUECKSTEIN: Good afternoon, Your Honor. For the record Brian Glueckstein, Sullivan & Cromwell, for the debtors. Your Honor, I am here today with two of my partners, Stephen Ehrenberg and Stephanie Wheeler, who will be handling certain matters in the adversary proceedings.

Your Honor, this is -- Agenda Item No. 11 is the debtor's motion seeking entry of an order authorizing the debtors to enter into and perform under the reimbursement agreements with the specified professionals of the Ad Hoc Committee of Non-US Customers of FTX.com. Your Honor, we were informed a short time ago, this morning, that the U.S. Trustee is standing down on its objection to the motion. We, of course, appreciate this development and are pleased to have the U.S. Trustee drop this objection.

We were, however, surprised by its timing given that specifically on Monday we did inquire with the U.S. Trustee as to whether Mr. Ray needed to travel and appear today at the hearing for potential cross-examination and we were told he did. So, Mr. Ray is here in the courtroom this afternoon and present.

The only remaining objection that we have to the motion this afternoon is an objection that we have to the motion this afternoon is an objection that was filed by an individual creditor, Mr. Pat Rabbitte. I will address his objection and the requested relief briefly.

First, Your Honor --

THE COURT: I think there was an additional one, another pro se claimant has filed an objection that was just filed yesterday I believe; Mr. Carter.

MR. GLUECKSTEIN: Okay. Mr. Carter had, if this

is the one, I'm thinking of, some broader issues as well, but to the extent it looked as an objection to this, you know, I don't think there are new issues here. But you can certainly hear from the objectors.

In support of the motion, Your Honor, we did submit the declaration of the debtor's chief executive officer, Mr. Ray, that we filed at Docket No. 3700. As I noted, Mr. Ray is here in the courtroom and available if the Court has questions, but we would ask that Mr. Ray's declaration be moved into evidence.

THE COURT: Is there any objection?

(No verbal response)

THE COURT: Hearing nothing, it's admitted without objection.

(Ray declaration received into evidence)

MR. GLUECKSTEIN: Thank you, Your Honor.

Your Honor, the ad hoc committee, with members currently holding well over $1 billion, I believe it's in excess of $1.2 billion based on the updated 2019 that was filed this morning, of FTX.com claims has been and continues to be an important constituency whose active participation in these cases has benefited the debtors and their estates.

The ad hoc committee was formed very early on in these cases and has continued to both grow and evolve to be representative of the vast and diverse group of FTX.com

customers. The ad hoc committee commenced, as Your Honor knows and will recall, an adversary proceeding early on in these cases asserting property interest in the debtor's digital assets. The fair resolution of those claims has been an important issue for the debtors to discuss and resolve as part of this plan formation process.

The FTX.com creditors, who constitute the debtor's largest class of creditors, are separately classified in our proposed plan and will be entitled to vote in the amended plan that will be filed shortly and brought forward before Your Honor. The ad hoc committee, of course, is not an estate fiduciary, but the debtors believe that it is representative of the customers of FTX.com, including small and large holders of claims and includes both initial holders and subsequent claims purchasers.

While they will undoubtedly be FTX.com creditors whose views differ from the consensus views expressed by the ad hoc committee, the debtors believe that the ad hoc is well situated to negotiate settlements of customer related issues with the debtors on behalf of a critical mass of customers who can support the relief that results.

The alternative, Your Honor, of negotiating individually with every single of the millions of customers is impractical. Thus, the debtors have determined, in their business judgment, to agree to reimbursement of reasonable

fees and expenses of the ad hoc committee professionals as set forth in the reimbursement agreements and the proposed order that was filed with Your Honor. These agreements have been extensively negotiated and considered before we brought them here today for approval. The UCC has scrutinized these agreements and has not, as they stated in their statement, does not object to the relief that is being requested today.

Mr. Rabbitte's objection, as the now abandoned U.S. Trustee objection, wrongly argues that the request that is before the Court is governed by the substantial contribution standard under Section 503(b) of the Bankruptcy Code. Respectfully, Your Honor, we submit this is not the law. As detailed in our papers there is clear and persuasive body of recent case law, including a decision by Judge Silverstein just last week, that draws a distinction between a request by the debtor and a request by the creditor seeking reimbursement and holding that Section 363 is a valid statutory basis for the requested relief when being sought by a debtor.

The District Court's opinion, affirming this Court in Mallinckrodt, examined this exact issue, and arguments, and correctly determined that Section 363 and 503 of the Bankruptcy Code are directed at different parties, operate at different times, and serve different purposes. Numerous other Courts have examined this exact issue and agreed,

including Courts in this district in recent decisions of Kidde-Fenwal and Amyris, Section 363 is the appropriate legal standard and the uncontroverted evidence that the debtor has submitted demonstrates the debtors have exercised their reasonable business judgment in agreeing to the terms of the reimbursement agreements with the ad hoc committee.

As Mr. Ray's testimony, now uncontroverted, explains the debtors have received substantial benefits from the ad hoc committee's support and cooperation to date and that cooperation and constructive participation in these cases is important as the plan process moves forward. Mr. Ray's testimony also explains, in the debtor's view, there could at some point on certain issues be divergence of interest between the FTX.com customers and general unsecured creditors whose collective interests are represented by the UCC.

In fact, the ad hoc committee and the UCC do represent and serve distinct roles. The committee represents the collective interest of all unsecured creditors of FTX.com and otherwise. The ad hoc committee, of course, represents not only the FTX.com creditors that does so with respect to all claims including their assertions that those customers hold property interests in the debtor's assets. Therefore, the debtors view the ad hoc committee as an important counterpoint to the UCC on a number of issues and we believe

separate representation is appropriate.

Critically, Mr. Ray explains in his declaration that the benefits of the ad hoc committee's active participation to date, including the negotiation and entry into a plan support agreement on October 16th. That plan support agreement, which is also supported by the official committee, was reached following constructive and lengthy negotiations with the ad hoc committee and its professionals.

The PSA creates a binding obligation on the ad hoc committee to settle the customer property adversary proceeding and other key disputes with the debtors and to support the debtors plan process pursuant to the terms contained therein. Insuring that agreement stays in place is an important consideration as Mr. Ray explains in his declaration.

Furthermore, Your Honor, the debtors negotiated the terms of the reimbursement agreement at arm's length and successfully included numerous safeguards. Among them, insuring that the work that is eligible for reimbursement is benefiting the estates as a whole, that there are appropriate caps on fees that were carefully and subject of lengthy negotiations, and, of course, that the debtors retain a right to terminate that arrangement at any time if that is in the best interest of the debtor's estate.

Additionally, Your Honor, there will be ample

opportunity, and we believe very importantly, we negotiated there to be additional safeguards so that both the Court and all parties in interest have the opportunity to evaluate whether the actual fees being sought are reasonable and benefit the estate because the professionals are subject to the Court's interim compensation procedures and review by the fee examiner with respect to all fees that are submitted for reimbursement.

The evidence before the Court, Your Honor, conclusively establishes that the debtors, through Mr. Ray, and the debtor's board of directors determined in its business judgment that reimbursement of the ad hoc committee professionals is in the best interest of the debtors and their estates. We submit, Your Honor, the debtors have carried their burden, based on that business through Mr. Ray's testimony, to satisfy Section 363(b) of the Bankruptcy Code and we request that the revised order that we submitted this morning, which makes a few technical changes that had been part of the U.S. Trustee's objection filed at Docket No. 3796, be entered.

THE COURT: Let me ask you some questions because I am struggling with how the ad hoc committee -- in their own papers they say what we did was we sued the debtors, we negotiated with the debtors, we settled that lawsuit through our plan support agreement which includes providing that our

clients and other similarly situated parties have a separate class and receive priority payment over other general unsecured creditors. That sounds to me like they were acting in their own self-interest and maybe it had an incidental benefit to the estate, but they certainly weren't acting for the benefit of the estate in that context.

I made it clear in Mallinckrodt, and Judge Stark agreed with me in his opinion upholding my decision, that in this context the business judgment rule, it's not just the debtor's business judgment, but it also has to be something that -- it has to be engaged in something that is beneficial to the estate, more akin to a 503 standard. And under 503 it's, obviously, clear that it cannot be just simply incidental. I am afraid we are opening a pandora's box here that anytime a creditor says, hey, I got a $100 million claim against the debtor, I have now settled it for $50 million after months of negotiations with the debtor, that opened up $50 million of additional funds for other creditors so, therefore, you should pay my fees. Why should I do that?

MR. GLUECKSTEIN: Your Honor, I understand the concern and I don't think that is what is happening here. I do think the facts here are unique and under no circumstances are we suggesting they should be par for the course or ordinary course approval of fees. What we have here is a situation where we have a class of creditors that numbers in

excess of, at least, a million that are creditors of FTX.com. The lawsuit that was filed by the ad hoc group, by the ad hoc committee, seeking property interest claims is an issue that needs to be resolved. We have discussed it before Your Honor. Your Honor has raised question about these questions, and they need to be resolved. And we need to have somebody to talk to, to resolve those issues and related issues.

There are a significant number of issues here affecting the FTX.com creditors that are central to our plan, how we deal with preferences, how distributions are going to be made. There is an ongoing process, as Your Honor knows, to deal with the FTX.com exchange. What eligibility are customers going to have should there be a successful transaction to take distributions in alternative manners.

These are questions where the debtor and their estates, in order to come forward with a plan that is both actionable and that begins to build consensus needs to have a critical mass of those creditors at the negotiating table. It’s simply not realistic to suggest that we are going to be able to negotiate, in the first instance, a plan of reorganization with such a disparate group of a million plus creditors.

THE COURT: The ad hoc committee only represents 38 creditors. They can’t act on behalf of the other nine million.

MR. GLUECKSTEIN: They can't act on behalf of them, that is true. And as I stated earlier, they are not certainly acting in a capacity as a fiduciary for those, but we do believe that they are representative and that --

THE COURT: And you are going to present your plan, and seek to have it approved, and any one of those or any multiple number of those nine million customers might come forward and object. So, how does dealing with just the ad hoc committee resolve that issue?

MR. GLUECKSTEIN: Well, it does two things. First, we are resolving the litigation and I understand that simply resolving the litigation is not enough for reimbursement. We wouldn't be proposing that, but that is an important milestone in the case to have that litigation resolved. There is two adversary proceedings filed on this issue through our plan support agreement; both of now have been resolved on this issue.

The issues that flow out of that, in terms of plan formation, to know that there is a critical mass of customers holding a significant value in claims, in excess of $1.2 billion that has been subject to NDA, that has been at the negotiating table, that has looked at the issues, has had arm's length negotiations with the debtor, with the creditor's committee, and has looked at all of the different permutations that we have been contemplating before we bring

a plan forward is helping to build critical consensus that we need for this plan.

We think that is, and Mr. Ray's testimony in his declaration goes to this point, providing collective value to the estate on the unique facts of this case, which is that we have such a large, both in terms of number, in terms of volume of claims, value of claims, and just numerosity number of claimants.

You are absolutely right, Your Honor, we will put our plan forward, it will go out for solicitation, it will be voted on and undoubtedly there are going to be creditors who have a differing view. But we do believe that the efforts that have been made by the ad hoc committee to work with the debtors, to work with the committee, to build consensus is shortening the timeline on this case and it is helping to get towards what we hope, ultimately, is a consensual plan.

THE COURT: Let me ask you another question, it's not necessarily related to this motion -- no, it is related, but not only this motion. The ad hoc committee says in their papers there is an actual conflict of interest with the UCC because the UCC cannot act for the benefit of these customers are different from other general unsecured creditors because they are arguing that the property is actually theirs and should have been returned. That was the basis of their lawsuit and they have now settled that, obviously, through

this plan support agreement.

Is there a conflict with the UCC? How do I deal with that? And maybe this isn't a fair question for you, but why didn't they move for appointment of a separate committee?

MR. GLUECKSTEIN: Well, I think --

THE COURT: We wouldn't have this problem.

MR. GLUECKSTEIN: -- Your Honor, you know, we haven't used the word "conflict" in that way. Obviously, conflict has a very specific meaning, but I think, as I touched on earlier and as we explain in our papers, from the debtor's perspective if the claims that have -- the committee, the official committee represents the interests, collectively, of unsecured creditors. By definition they need to be unsecured creditors.

The rights that have been asserted in the adversary proceeding by the members of the ad hoc committee are that they are not unsecured creditors that they are, in fact -- that the debtor is holding their property, that they want a return of their property. So, by definition if they are, in fact, property owners and those claims when ultimately litigated were to prevail they wouldn't be creditors in this case, they would be some mechanism to return property. There are all kinds of issues here of why that doesn't work in terms of whether we have the property and how that all works, but there are equitable trusts and

other arguments that we talked about.

So, I think the argument, as I say, we don't view -- I don't view it as a conflict, I just view it as they're representing different interests and to the extent that the ad hoc committee is bringing forward and pressing their interest as property holders, and that is the dynamic that we faced in the negotiation of coming up with the structure for the plan where the committee is representing the interests very well of all unsecured creditors of not only FTX.com, but of the other debtors.

We have the ad hoc members saying but we believe we have these property interests and that would take us outside the purview and the scope of the committee's mandate by statute. So, I don't view it as a conflict as much as that there are differing interests in play in putting this complex puzzle together.

THE COURT: Okay. Anything else?

MR. GLUECKSTEIN: Nothing else unless the Court has any other questions.

THE COURT: Let me hear from the parties who support the plan.

MR. HARVEY: Good afternoon, Your Honor. May I please the Court, Matthew Harvey from Morris Nichols Arsht & Tunnell on behalf of the ad hoc committee.

Your Honor, I won't repeat anything from the

debtor's well-articulated arguments in support of their motion. As set forth in our filed reply, because the objections we think regrettably were founded on misconceptions about the ad hoc committee's composition and purpose, and the crucial roles that we think we played in this case, we would like an opportunity to just briefly address those points.

The first point, Your Honor, that I would address is that as set forth in our reply filed on Sunday and in our third supplemental 2019 statement filed this morning, and I will note from that, Your Honor, the group membership is now actually 66 members, 58 of which are original holders, the ad hoc group represents a diverse group of FTX.com customers spanning over 31 countries globally. Our purpose, as outlined in our bylaws, and this is a quote, is to: "In a cost efficient and timely manner maximize recoveries on claims against FTX Trading Ltd., and its affiliated debtors by leveraging the position that the debtors have no equitable interest in the customer assets". The very next line is: "Membership is open to all creditors aligned with this purpose". So, that is number one on the, sort of, composition and purpose.

Number two is on the early contributions and recognition in this case. Your Honor, we were actually formed 13 days before the U.S. Trustee appointed an official

committee. And to address a point Your Honor raised we did actually seek a separate customer only committee from the U.S. Trustee's office which they did not elect to appoint. From there we went on with our role as the ad hoc committee. We --

THE COURT: Well, you could have filed a motion asking to appoint a committee.

MR. HARVEY: We could have, of course, filed a motion, Your Honor, but we determined at the time that proceeding to an ad hoc committee, including being able to bring the litigation promptly before engaging in motion practice over that, was the more prudent course at that time.

Regardless of whether we were an ad hoc committee or official committee, we set out immediately to try to address this dire situation that FTX customers found themselves in suddenly in early November 2022. We put forth, we think, what were the strongest arguments in favor of FTX.com customers and their property rights. And despite initial challenges and skepticism from others in the case our customer property rights laid the foundation -- our customer property rights arguments laid the foundation for what became the original draft plan filed over the summer and eventually through further in-person and other negotiations in September and October which are extensive and contentious the settlement plan support agreement and the plan term sheet

that the debtors filed in mid-October.

We think that we have contributed substantial value to this case. Contrary to the objections, this value is undeniably demonstrated. Our efforts have conserved estate resources, advanced the cases, achieved favorable outcomes under the PSA and the plan term sheet, and we believe we have played a pivotal role in breaking deadlocks and negotiations between other parties in the case including the debtors and the committee.

This goes, I think, part to the point Your Honor was raising about benefit to the estate versus benefit to the constituent. In all of these cases where we have these ad hoc committees, and I will elude to the government ad hoc committee in the Mallinckrodt case, they, of course, have their own parochial interests. And I think what Your Honor recognized, of course you know your ruling better then I do, was that they were putting aside those interests and their parochial pursuit of just those interests. Many of those government entities had pending litigation or investigations against Mallinckrodt before the bankruptcy for their role in the opioid crisis. Some of those were stayed, some probably were not stayed as a result of the police power exceptions, but they held those in abeyance just as we have done with our litigation and they went to the mediation in front of Judge Sontchi in that case, and they worked out what was ultimately

a global --

THE COURT: Mr. Feinberg was the --

MR. HARVEY: Mr. Feinberg, yeah, that's right. Mr. Feinberg was, I believe, for that one and Judge Sontchi was the one that my client in that case participated in with the official committee.

To address another point, Your Honor, there were dissidents after that. My client in that case was one of them from the settlement that was reached, but the fact that there may be dissidence to a deal that is broadly supported by the key constituencies in their representatives I don't think is an impediment to this type of motion.

We recognize in a case of this size you are likely to never achieve, especially a case like this which is a free fall bankruptcy without the ability to preplan and come up with a structured support agreement ahead of time and lock-in votes through a prepetition restructuring support agreements you are going to have contention, there is over a million FTX.com customers. There will be people that come out of the woodwork, I'm sure of it.

What we are committed to as an ad hoc committee is trying to bring as many of those people into the fold to explain to them because all of the viewpoints that others are expressing we have on our committee and we have considered those. We have synthesized those into our views recognizing

the limitations of the bankruptcy law, the law, and the facts, and the strictures of the way a plan needs to get done, and the requirement for equal treatment among similarly situated people to try to find a way that maximizes value, respects as many of those interests as possible and doesn't mire these estates in litigation.

It would be costly to everybody whether you are an unsecured creditor, a secured creditor, customer of FTX.com, customer of FTX US, whoever you are in the case litigation that is long and drawn out and will not benefit anybody. We won't be able to avoid all litigation in this case. There might be creditors that on a one-off basis object, but we believe we have already substantially narrowed it and we will be able to continue to substantially narrow it.

I will address another point, Your Honor, that our membership has been open to everybody. We have never denied anybody membership. When we have heard people that didn't want to join the membership it was earlier on in the case. It was for, you know, the free-rider problem that they didn't want to have to spend their own resources. Many of these people are very small holders.

Actually, I think the morality of our holders are very small holders. Many did join anyway, but they didn't want to expend their resources while others who get the benefit of the very favorable deal we cut here or had we

litigated to completion the result that we would have hoped would have been favorable without expending any of the resources of their own. So, you had a free rider problem.

The other problem you had was both before and after your Court's ruling on the 2019 statement and sealing which, of course, we respect. There were people that were, you know, nervous about disclosing their identities because of the jurisdictions in which they laid in for other reasons. So, we have never been a closed group. We invite people, it's actually in our 2019 statement, to contact us.

Ms. Broderick, my co-counsel, is on the phone and is closer to some of these issues. She can address them on specifics. I think we talked to nearly 300 customers. Our group is now up to 66 members; 58 of them are original holders, eight of them are secondaries.

On the point about -- Your Honor didn't have questions on this, so I'm happy to not go into and waste any time. Your Honor ruled this in Mallinckrodt, there is no meaningful distinction between a primary and a secondary in terms of their rights *vis-à-vis* the debtor and under the plan. So, we think that is a false distinction, but it's also just untrue what has been raised in some of the commentary out there that this is a committee that is nominated by secondary holders is not the fact.

THE COURT: Well, what exactly are you going to

seek reimbursement for? Are you going back to everything you've done since the committee was formed?

MR. HARVEY: We are not. In fact, Your Honor, this covers only from May 1 forward, which is the point at which the -- plus or minus, when we stayed the litigation and sort of got under the tent with the debtors, signed up NDAs, began negotiating with the debtors, really we're able to bring to bear the varying viewpoints of our members, large and small, primary and secondary, people with preference exposure, people without preference exposure, get access to information, have negotiations with the creditors committee, have negotiations with the debtors, evaluate their proposals, advocate for our proposals.

So this is, I believe, consistent with what Your Honor observed in Mallinckrodt, you were uncomfortable having the fee reimbursement continue if things fell apart and people started litigating or they weren't negotiating in good faith. That's not to say that at some point we reserve the right for the fees prior to, I think it's April, if at the appropriate time to seek whether a substantial contribution otherwise, but that's not before the Court today. What's before the Court today is, starting May 1 forward, which is when our engagement with the debtors under NDAs and negotiations formally began.

THE COURT: Okay.

MR. HARVEY: So I don't have anything else further. I only see -- I want to see if I have anything to address here, any of Your Honor's questions that I don't believe that -- I believe the debtors' counsel covered that.

THE COURT: The conflict.

MR. HARVEY: The conflict with the committee. Conflict might be the imperfect word for this, Judge. I think it's more of a square peg in a round hole for the committee. The committee has a very important role to fulfill in any case, in this case in particular, where there's a diverse group of unsecured creditors, just like our group has diversity within the group and there's diversity within the constituency, it's a diversity with the unsecured creditors. My personal view with this is that it would be odd indeed for an official committee to file a lawsuit the way we did and say that significant assets that someone else may argue are in the estate are in fact out of the estate and unavailable to unsecured creditors, and are available only to a subset, although the largest subset of the constituents in this case, the ftx.com customers. And then to try to litigate something like that to completion or even in negotiations to push the position that this property is property of those customers to the exclusion of others who we call general unsecured creditors in the case.

So I don't know that conflict is the right word,

they're just maybe not the appropriate party to advance what we've done in this case.

THE COURT: Okay.

MR. HARVEY: Does Your Honor have any further questions for me?

THE COURT: No, nothing. Thank you.

MR. HARVEY: Thank you, Your Honor.

MR. PASQUALE: Good afternoon, Your Honor, Ken Pasquale from Paul Hastings for the official creditors committee.

Your Honor, for the most part, I have nothing to add to the statement that we filed on behalf of the official committee. We have no objection to the ad hoc counsel fees or to the Rothschild monthly fees, and reserve all our rights on the Rothschild transaction fee, but I do want to address the question that Your Honor answered with respect to conflict. We certainly do not, in our view, have any conflict.

The committee can negotiate and in fact has negotiated with the ad hoc committee, with the debtors, with the other class representative the plan support agreement, which we think is a significant development in the case, but all of the positions can, should be, and have been evaluated and addressed in a real way by our committee. There's no conflict. The committee, of course, has a fiduciary duty to

represent all of the creditors, and our committee has taken that responsibility extremely seriously and considered the number, the amount of the customers at the international exchange. The non-exchange customers, the U -- those are all -- excuse me, I went too fast -- the U.S. customers, all of those different creditor constituencies are of course within our purview and something we take, again, very seriously.

So we don't see any conflict, but I do want to emphasize -- and I know I said this just a second ago -- that the plan support agreement is a significant development, and the ad hoc committee and the other stakeholders around the table were important parts in getting us to where we are now. And, as we've said over and over again in these cases, the goal of the official committee, and I know it's of the debtors as well, is to maximize recoveries for all of the creditors and to find an exit to bankruptcy at the soonest possible date, and the plan support agreement is an important step in that direction.

THE COURT: Okay. Thank you.

MR. PASQUALE: Thank you, Your Honor.

THE COURT: Mr. Hackman?

MR. HACKMAN: Good afternoon, Your Honor, may it please the Court, Ben Hackman for the U.S. Trustee. I rise to confirm that our office is not prosecuting our objection

here today.

THE COURT: Are you withdrawing the objection? I was a little confused by the language you used in the email.

MR. HACKMAN: I wouldn't say --

THE COURT: I thought you were --

MR. HACKMAN: -- I wouldn't say that, Your Honor. I don't want to prejudice our rights in case there is another request made in the future. I want to reserve any and all objections to any future requests to have professional fees be reversed --

THE COURT: Well, if there's a future request, you'd have to file another objection -- the committee would have to file another motion and you'd have a right to object to it.

MR. HACKMAN: Yes, Your Honor. In case future motions are filed, I want to reserve all of my client's rights and objections on those points.

THE COURT: Okay.

MR. HACKMAN: Thank you, Your Honor.

THE COURT: Thank you.

Anyone else in the courtroom before I --

(No verbal response)

THE COURT: No. Okay. Do either of the -- Mr. Rabbitte. I hope I pronounced your name correctly.

MR. RABBITTE: That's correct, Your Honor. Good

afternoon. Can you hear me clearly?

THE COURT: I can. Thank you.

MR. RABBITTE: Firstly, thank you for allowing me the opportunity to speak to you and your Court today.

As you know, these cases have affected millions of people around the world and I'm just one of them. I am most definitely not an expert in bankruptcy, far from it, but just like many thousands of others with significant personal funds tied up in this estate, I've had to learn how bankruptcy works along the way. I, along with countless other affected creditors, on social media have been following the case, trying to make sense of how we achieve the goals of funds recovery. And, as such, we all want what is best for our collective recovery.

When I first read the U.S. Trustee's objection to the fee reimbursement portion to the ad hoc committee, the points raised by the Trustee made sense to me. As matters have progressed, the transparency of the bankruptcy process is also something that's become clear to me and, with that, I saw that many things get filed on the docket, so I started to do some research. When I first saw statements saying that the ad hoc committee solely represents the interests of dot com customers like me, to be honest, Your Honor, that didn't make a whole lot of sense concerning what I had seen on the docket. I'm talking specifically about what the ad hoc

identified as their members. It appears that there are claims that represent not only dot come customers, but also non-customer payments. And, Your Honor, I can give you some examples and cite some examples. For instance, ad hoc includes Claim Numbers (indiscernible) 13 and (indiscernible) 16, which account for 17 million in non-customer claims; Claim Numbers 202 and 203, which account for 8.7 million in non-customer claims; and as well as the secured claims against Alameda Research for 24 and a half million, which correspond with Claim Numbers 4403 and 4297.

In addition, a statement made by the ad hoc committee on August 18th seemed to imply a contradiction of the very legal arguments that were the basis of the property claim they purport to represent. Their statement said, and I quote, we generally support the treatment of all FTX customers equally irrespective of the type of digital assets held as of the petition date and subordination of claims with respect to crypto tokens to general unsecured claims, end quote.

The valuation of digital assets as of the petition date could be the item that I'd expect the ad hoc to be firmly against in the debtors' draft plan (indiscernible) support of others.

Lastly, while the ad hoc's response indicated no (indiscernible) preference (indiscernible) activity would

indicate that one of the ad hoc's members, namely GSR (ph), withdrew $14 million worth of (indiscernible) coins from November 6th and 7th, right before withdrawals were halted.

Given the already high fees of this case generally, it concerned me that adding these reimbursements would increase the fees to the estate on the one hand, but, more importantly, I didn't understand how these fees would be specifically going to represent dot com customers. It also appeared that (indiscernible) had an outsized role on the ad hoc committee based on what I had heard from the directors, and that, of course, concerned me.

On top of all of that, the other points that were raised by the U.S. Trustee largely made sense to me as well, so it's on that basis that I decided that I would take this opportunity to object to this motion.

Your Honor, I very much appreciate you taking the time to hear what I've had to say today, and for your guidance and wisdom on this issue.

THE COURT: Okay, thank you.

MR. RABBITTE: Thank you very much, Your Honor.

THE COURT: Thank you, Mr. Rabbitte, I appreciate your comments.

Mr. Carter, are you on the call?

MR. CARTER: Yes, Your Honor, I'm here. Can you hear me?

THE COURT: I can.

MR. CARTER: Thank you, Your Honor. My name is Simon Carter, for the record. I'm not familiar with speaking in front of such a forum, so I'll do my best.

There are, in principle, two points I'd like to make. First, it seems to me that justification for the fee and reimbursement motion is married to the performance of the ad hoc committee, what they have done and what they are going to do. The platform upon which the ad hoc committee stand is -- or, rather, was the assets held by ftx.com belong to its customers, that was their adversary complaint, it was not for the benefit of the estate and it formed the playing field upon which they engaged within these bankruptcy proceedings. The debtors, on the other hand, continue to allege those assets belong to the estate.

Asset ownership is clearly a gating issue and remains the elephant in the room, but there has been no progress by the ad hoc committee in open court. Consequently, the question of who owns the digital assets remains uncertain, and it seems to me that the ad hoc committee have abandoned their platform. And, according to the debtors, some months ago, the ad hoc committee began negotiating with the debtors for a plan of reorganization to represent the interests of their constituents, and the settlement and plan support agreements to which the ad hoc

committee have now subscribed underlines their adversary complaint will go no further.

Your Honor, you know, I'm reminded of the reluctance of the ad hoc committee to get involved in the oral argument about digital asset ownership at the September the 13th omnibus hearing. This, to my mind, reflected a missed opportunity to represent their mandate; it miscalculated that ownership remains a priority issue for customers at large, you know, customers who have their life savings at stake.

So, taking a step back, has the ad hoc committee achieved the mission they set out to do, to test the ownership of assets in this court? No, they have not. Has the ad hoc committee represented the interests of all customers? I don't believe they have represented the best interests of digital asset holders who are arguably the largest population of customers.

It is evident from the second draft plan of reorganization that the ad hoc committee has had a positive impact that would benefit some customer groups, including preference customers who withdrew assets in the days before the collapse, but this is an achievement made on a different playing field from the one the ad hoc committee set out to play on. If I was marking their homework, I'd have to say they haven't met the term of their assignment; therefore, the

ownership -- therefore, as the ownership question is unresolved, I object to paying legal fees and future disbursements that would be, you know, a potential misuse of customer-owned assets which do not belong to the debtors' estates.

The second point I want to make is very much related to the first. To my mind, it's fundamental that the Court has opportunity to deliver its opinion on the gating ownership issue. This is why I've been compelled to submit a motion for opinion *pro se*, so that Your Honor can do just that, to provide your opinion in answer to the question whose digital assets are they. It's a matter essentially contained within the four corners of the terms of service. These were the rules which I and thousands of similarly situated customers read and understood to apply to our assets when using the platform. However, the debtors and the ad hoc committee are now joined in their thinking that to unravel the ownership issue is too complex, it will take too long, be too expensive, and, in any case, the assets are now gone, but that view is primarily focused on the aftermath of the collapse, it skates over the fact that establishing ownership does not turn on the ability to trace the digital assets. Tracing or recovery or restitution or a plan of distribution -- sorry, a plan of reorganization is the step that follows after ownership is known.

So, Your Honor, regardless of what crypto assets remain in the debtors' possession or not, as the case may be, the ownership question could still be answered. For example, title to property is not lost merely because the property has been stolen, and it's important not to lose sight that missing crypto assets are the direct result of FTX misappropriating customer property. This has now been established beyond reasonable doubt in the criminal and civil courts, but the ad hoc committee, if I understand correctly, is now complicit with the debtors' allegation that customer assets fall within the estate; that is, unless a customer can prove a claim to a particular crypto coin in a particular omnibus pool. And, I must agree, that would be a complex undertaking, but in my opinion it's also wrong-footed. It fundamentally misstates that the coin in the custodial wallet is the entirety of the digital asset, it was not. Rather, the digital asset, as was defined in the terms of service, was a crypto token issued by the platform and held in my account, and that token remains identifiable in my account today. It's that token which provided an entitlement to an equivalent coin held in the omnibus pool; that is, to a fungible coin which is identical to the next. Just as a dollar is a dollar, a bitcoin is a bitcoin is a bitcoin.

Your Honor -- and I'm not about to rehearse the arguments of my motion, though I'm conscious I've already

strayed into some of the merits, but it was necessary ground to cover to make a point. Your Honor's opinion on the ownership matter may well shake the foundation of these proceedings and I hope it does, for myself and similarly situated customers. Confirming the digital assets belong to the customer and not to the estate is the quickest way to move forward and ensure everyone gets what they are legally entitled to. This ensures everybody is treated fairly. There should be no room for sharp elbows of an individual creditor group trying to advantage themselves over others.

But the point I want to make is this: Before committing to reimburse the past and future legal fees of the ad hoc committee, whose defined contribution is presently based around the settlement and draft plan of reorganization, it would be the right order of things to first establish what the future looks like before committing to fund the players who will play the game. I've been in contact with several customer groups who would seem to have skills and experience that would also bring value to the table.

For these reasons, I cannot support a motion to reimburse the legal fees of the ad hoc committee, whose working mandate is to invade property which is not considered to form part of the debtors' estate. Respectfully, it would seem premature to enter into such a commitment until there is clarity on the gating issue.

And, Your Honor, while I think of it, there's one final brief point I'd like to make and that is to look at related bankruptcies of Celsius and BlockFi, whose custody services and terms were the same as FTX. These platforms also used crypto tokens and crypto token entitlements as a means to identify fungible coins belonging to customers held in omnibus pools. But, moreover, what is particularly striking is that early on in those bankruptcies it was the debtors who acknowledged, due to the terms of use, that those digital assets held in custody in the omnibus pools belonged to customers and not to the estate.

Thank you.

THE COURT: Okay. Thank you, Mr. Carter.

Mr. Carter, just a couple of points. You talk about the mandate of the ad hoc committee, but the ad hoc committee, as we've been talking in the courtroom and you might not have understood the legal terminology, they are not a fiduciary of the estate. So they don't have an obligation to anyone other than those who are members of the committee itself and they're acting on their behalf.

And the other point I wanted to make is your motion to -- for an opinion, I know that's something they do in the UK, but under the rules and the law of the Bankruptcy Code here in the United States, I cannot give you an advisory opinion, I have to have something that is in front of me that

gives me the basis for that. And because you're asserting that the property being held by the debtors is your property, that requires under the Bankruptcy Code the filing of an adversary proceeding, which is what the ad hoc committee did initially, they filed an adversary proceeding. It was basically a complaint, a lawsuit, alleging that the property belonged to the customers, not to the debtors' estates.

So I can't rule on your motion for opinion, it would have to be an adversary proceeding that would have to be filed, and that would have to be litigated, which is why the ad hoc committee came to the conclusion that it was better to resolve the issues through this plan support agreement to avoid the costs of litigation. And the debtors would have vigorously defended that lawsuit and the costs would have been astronomical compared to being able to resolve this in an amicable fashion.

So I just wanted to make sure you understood those procedural issues regarding what you filed. Okay?

MR. CARTER: Okay. Thank you.

THE COURT: All right. And, with that, I'm going to -- let's let Mr. Harvey, on behalf of the ad hoc committee, respond to the two *pro se* claimants first.

MR. HARVEY: Excuse me, Your Honor, for the record, Matthew Harvey from Morris, Nichols, Arsht & Tunnell. Thank you for the opportunity to respond.

One thing I'll note, Your Honor, is my co-counsel, the lead counsel to the ad hoc committee, Erin Broderick from Eversheds Sutherland, is on the phone and I may ask her to jump in on a couple of the points that she's closer to. But I'll start with saying that we reached out to both of these claimants, I'm not sure that either of them has responded to us, because I think that their viewpoints are valuable and I think, once they talk to us, they'd understand that we've considered all of those viewpoints and we've incorporated them into our analysis and evaluated the strengths and weaknesses of them.

And I think Your Honor just touched on this, in terms of process, and this goes -- specifically, I believe Mr. Carter pointed out that -- and I think he acknowledged that the effort of tracing these assets would be -- and Your Honor just said -- it would be a very significant undertaking probably involving, you know, months, if not years of discovery and undertaking.

So we filed the action, we filed a summary judgment motion, but our summary judgment motion was on the threshold question of what do the terms of service say and, in concept, does this provide, you know, what we call a legal trust, an express trust, or does it provide some form of equitable trust, to the extent the assets aren't sitting there, constructive resulting. Otherwise, there's other

theories, and these were alluded to in the *pro se* objectors' comments, that does it even not become property of the estate if it's embezzled or stolen, but you still have the secondary problem of tracing these. And we believe, of course, there are theories you could try to do that in the aggregate and that, in and of itself, is a significant undertaking, but on a creditor-by-creditor basis it's even more significant and probably prohibitive for individual customers and that was certainly a significant factor in what we considered.

You also have the tension, and I'm not sure if they recognize this, between what benefits -- a declaration -- I heard a criticism, I don't remember which one of them, that you might want to go after preference recoveries more, but of course a determination that this is customer property would mean that those were not preferences. So you can't have it both ways. You can't say that these are categorically customer property and, therefore, you know, no one else in the estate should have any piece of it, unsecured creditors, but let's also go recover what was sent out to people prepetition.

And, again, these are complex issues. We have people on our committee that both have preference exposure and don't, and this is things that we -- we, in consultation with those -- discussing with those people, discussing (indiscernible) professionals with the debtors and the

committee, and then also with the, you know, hundreds of other people that we talk to, we take those views into account and we reach a settlement. And you have a settlement now that proposes to distribute 90 percent or upwards of 90 percent of all distributable value in the estate, recognizing the strength of the arguments that there is customer property.

So I think that, Your Honor, that I would encourage both of these claimants to engage with us and discuss with us and, you know, even consider joining our group. Again, the membership is open. I think, you know, these are two customers out of millions, the only ones objecting to the relief requested today. We're happy to engage with them. We don't think that their criticisms of the group are fair.

As Your Honor observed, we did file an adversary proceeding, we immediately -- or almost immediately filed a motion for summary judgment. We were prepared to go forward on that until invited to try to resolve these issues consensually. And I think, as Your Honor has observed in other cases, like Mallinckrodt and other complex cases, the cost-benefit analysis of continuing to litigate can often become prohibitive once you think of the cost of doing that versus the benefit you can get from settling.

I'll pause here and see if my co-counsel Ms.

Broderick wants to address anything, if that's okay with Your Honor.

THE COURT: That's fine.

Ms. Broderick?

MS. BRODERICK: Thank you, Your Honor, and I apologize for technical difficulties joining by my phone and without video. But for the benefit of the customers that are listening on the phone and to address the threshold question of the benefit of the estates and the debtors, I think it's important to recognize here that there's no dispute that the ftx.com customers constitute the vast majority of the residual beneficiaries of the estates. But, as Mr. Carter properly points out, the estates here are in question, whether or not the assets that are being administered by the debtors belong to them or should be returned to customers.

The ad hoc committee has deeply analyzed these customer property ownership rights from the outset of the cases, has a command of the factual context and of bankruptcy law, and has analyzed the hurdles to judgment, the attendant costs and delay associated with receiving such judgment, from the vantage point of very diverse customers. We have done so because our membership is composed of those diverse viewpoints and interests.

And it's important to recognize that the position around, which we acknowledge is growing dissent among

different (indiscernible) groups, whether they hold digital assets or (indiscernible) or they have preference exposure or not, knowingly or not by those advancing them, they turn on customer property rights arguments, again, from preferences to valuation dates and methodology, to in-kind distributions, to ability for customers to have an upside in the estates. And we want customers to understand that we have not only well understood these arguments, but we've articulated them to the debtors and to the official committee. We've been able to objectively evaluate their arguments, and with all of us having the expertise and experience in Chapter 11 cases.

And, again, the purpose in our bylaws is, in a cost-efficient and timely manner, to increase returns to all holders of ftx.com claims. The distinctions that are recognizable we're acutely aware of, and I think will continue to be heard in these cases, have nothing to do with the holder of the claim being an original or secondary holder, they have to do with the claim itself. And as co-counsel, I think, well put forward, but I want customers to understand that in order to get a judgment that they are seeking from diverse vantage points, there will be uncertain litigation that will delay these proceedings and our plan process, have an impact on 2.0 exchange, et cetera.

So what we've done, and I think it has been not only a substantial contribution to the estates, but it has

kept these estates together, is to take all these viewpoints and come up with creative solutions that have a consensual path forward where all ftx.com customers are going to be better than the alternative.

THE COURT: Okay. Thank you.

MR. HARVEY: Thank you, Your Honor.

THE COURT: Hold on, Mr. Rabbitte, I'm going to let the committee -- or, I'm sorry -- yeah, the committee and the debtors respond first, and then I'll come back and let you make additional comments.

MR. GLUECKSTEIN: Your Honor, for the record, Brian Glueckstein for the debtors, just a couple of points.

Just taking a half step back, we're not asking for approval today of any settlement or any compromise of the customer property issue. The debtor is going to be filing an amended plan, as we've said, and a disclosure statement for that plan in December. Those documents are going to explain the plan terms, the terms of the proposed resolution of the ad hoc's customer property litigation, what the result of that means for creditors of ftx.com and the other estates. We'll have information with respect to estimates in terms of what -- for the first time of what people are likely to see out of this case.

That's part of the process and of course, as Your Honor knows, in the plan process solicitation, the disclosure

statement's approval will proceed and creditors who are entitled to vote will have the opportunity to weigh in on what we've proposed and what the ad hoc -- that we've negotiated with the ad hoc and the committee on these issues, and they'll have an ability to voice their view.

The question for today is whether or not the debtor, who is the movant here, has satisfied its burden under Section 363, as Your Honor has articulated in the context of these types of requests, that on the unique facts of this case it is appropriate for the debtor to use estate resources to perform under the reimbursement agreements, and, again, we submit that we have. The un-refuted testimony of Mr. Ray is clear. The debtors believe there's been a collective benefit to the estates by organizing this plan formation process, by having a counterparty to speak based on a representative group of the ftx.com creditors to negotiate these issues with and, in doing so, come to a resolution of the pending adversary proceedings, which are the pending litigation on these questions.

And, of course, there has not been an abandonment of that litigation, there's been a proposed settlement of that litigation, and that settlement includes certain benefits, substantial benefits, to the customers of the ftx.com exchange as a result of those arguments. The debtors have defenses to those arguments. As Your Honor pointed out,

there would be protracted litigation if we need to litigate those issues.

So what we have here is a settlement that is part of a larger puzzle where we're putting together a plan that, to Mr. Pasquale's points, we're trying to get the debtor out of bankruptcy and get all of the value that the debtor has been successfully marshaling, recovering, and then bring back into the estate and out to customers and to other creditors in accordance with that plan. And that process is going to move forward. The plan support agreement is a substantial milestone in this case having the support of the ad hoc committee, of the official committee, and of the debtor, and it provides the framework that will allow us to bring a plan forward in short order before the Court.

So, again, we submit, Your Honor, that on the facts of this case we think it is appropriate to permit the debtor to perform under the reimbursement agreements, and certainly all issues with respect and all parties' rights with respect to the plan issues and the settlement of litigation all reserved.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Pasquale, anything further?

MR. PASQUALE: Nothing to add, Your Honor, unless you have questions.

THE COURT: All right, no questions.

Mr. Rabbitte, I'll give you an opportunity to briefly make additional comments.

MR. RABBITTE: Thank you, Your Honor. I just want to come back in briefly with two counterpoints.

Counsel for the ad hoc mentioned the enormous difficulty there would be of tracing digital assets. I may not know much about bankruptcy process or bankruptcy law, but I do understand cryptocurrency, and cryptocurrency is fungible. And so that arduous task can be set aside because bitcoin is bitcoin, the same as one dollar is fungible as opposed to another dollar. So I just wanted to make that point that it's not necessarily -- it doesn't have to be this arduous, insurmountable problem.

And my second point is that the ad hoc approached this process with a very serious issue and what is a very serious issue for the 1.4 million creditors that are out there, which is property rights and digital assets rights. And, to my mind, if they are not challenging petition date valuations when they approach with that argument, then they're not prosecuting on that basis at all.

To be candid, Your Honor -- and I'll leave this as my final comment -- what creditors believe, what many creditors believe is they've taken a very serious issue and they're using that as leverage on the basis of negotiating

for preferences. That is what many creditors believe and I just wanted to leave you with those points. Thank you for the opportunity.

THE COURT: Thank you, Mr. Rabbitte.

You know, I don't want to get into specifics on too much of this, but the issue of tracing is one that is -- the fact that you said that crypto is fungible actually creates the tracing problem because, once fungible assets are consolidated into another account, then there's all kinds of legal ramifications to that that require unwinding of the issues and sometimes it's not even possible to trace. So that's why the tracing issue is a problem.

The other thing, Mr. Rabbitte, is that you will have the opportunity when the debtors file their disclosure statement and plan of reorganization to object to both of those, the disclosure statement and to the plan of reorganization, if you believe that something in there is inappropriate. Okay?

MR. RABBITTE: Thanks, Your Honor. Thank you.

THE COURT: Mr. Carter, do you want to be heard?

MR. CARTER: Yes, Your Honor, let me just start my video.

I just want to echo, to a degree, what Mr. Rabbitte was saying, reemphasizing the fungibility of the assets. It was a comment that was made that the -- in terms

of the assets we're talking about, when a customer placed their -- deposited their money with FTX, FTX took that and issued them with a token. The token represented whatever the particular coin was they were buying as a bitcoin and that's the -- the crypto token is what the customer held in their account.

The terms of service relate to those -- that particular token was held in the account as belonging to the customer and that token provided an entitlement to an underlying asset, the fungible asset that is bitcoin.

So we don't need to look at what was in the omnibus pools to understand who owned what, we only have to look at the token that was in the customer account because that was the asset, that was the starting point of describing to a customer what they owned. What the ad hoc, the committee, what the debtors are doing is they're looking at what's left in the custodial pools and that's the wrong way about it. They're not starting at the first position, they're starting at the -- somewhere down the chain; they're not looking at what was the asset that was owned. That's the first point I wanted to make.

The second point is the legal point, the legal points of ownership. If these assets are owned by customers, then how can they be within the debtors' estate, how can that rightfully -- those assets rightfully be used in a plan of

settlement? If they're not supposed to be in the estate, then why is the estate using them? And the only way, to me it seems, we can get to the bottom of that is by having the matter decided in court.

So my final question that I will ask you is, Your Honor, you mentioned that adversary judgment is the way to go forward with this, will the Court accept a *pro se* submission to that effect?

THE COURT: Certainly, you can file anything you wish as a *pro se* claimant, Mr. Carter, in the case.

MR. CARTER: Okay.

THE COURT: Yeah, so it would be an adversary proceeding, is what it's called, which is initiated through a complaint. And I can't give you advice on how to do that, that's something you'll have to -- I would recommend you might want to have counsel help you with that because it can be complicated

MR. CARTER: Okay.

THE COURT: Okay?

MR. CARTER: Thank you, Your Honor.

THE COURT: All right. And, as I said to Mr. Rabbitte, you also will have the opportunity to object to the disclosure statement and the plan of reorganization when that comes down the road.

MR. CARTER: Okay. Thank you, Your Honor.

THE COURT: Thank you.

Anything further?

(No verbal response)

THE COURT: All right. I was a little bit concerned about approving this, given what I asked Mr. Glueckstein about at the beginning about whether or not this wasn't just the ad hoc committee acting on behalf of itself and having an incidental benefit on the estate as a whole, but I'm satisfied under the unique facts and circumstances of this case, not least of which is the millions of customers that are involved here, that it makes sense that there be at least one voice -- or in this case 66, I guess, voices -- who can act through counsel to help steer this process to a plan of reorganization, given the diversity of the interests, as Mr. Glueckstein pointed out and Mr. Harvey pointed out, there's this diversity of interests between those who are creditors and also customers and those who are just creditors.

And I think having the ad hoc committee involved in that process is beneficial to the estate as a whole and, therefore, I will overrule the objections and will approve the debtors' agreeing to pay the fees as outlined in their reimbursement agreement with the ad hoc committee.

Any questions?

MR. GLUECKSTEIN: No questions. Thank you very

much, Your Honor.

THE COURT: Do we have a clean version? I saw the revised version that came up, it was a blackline. Do you have the clean version uploaded for entry?

MR. HARVEY: Your Honor, I'm going to need to check. If it's not already uploaded, it will be uploaded this afternoon.

THE COURT: All right. As soon as it gets uploaded, we'll get that entered for you.

MR. HARVEY: Thank you, Your Honor.

MR. GLUECKSTEIN: Great. Thank you very much, Your Honor.

I think that brings us then to the adversary matter's portion of the agenda, and I think the first item going forward is Item 13, which are the motions brought by Platform Life Sciences, so we'll turn it over to them.

THE COURT: That's going to take a little bit longer. Do we have -- I don't want to hold up those who have just -- are there any of these that are going to be short because I don't want to have people just stick around if they don't need to.

MR. GLUECKSTEIN: It's hard to say, Your Honor. I think certainly the -- that one, I think, at least has evidence, I think the other items on the agenda are a motion for a protective order, which is argument, and the short

status conference. So we could take them out of order, if Your Honor prefers.

THE COURT: Why don't we do the status conference at least first --

MR. GLUECKSTEIN: Sure.

THE COURT: -- get that out of the way and then we'll --

MR. GLUECKSTEIN: Sure. I'll turn it over to the U.S. Trustee then.

THE COURT: Okay.

MR. HARVEY: Good afternoon, Your Honor. Before we turn to other matters on the agenda -- Matthew Harvey from Morris, Nichols, Arsht & Tunnell on behalf of the ad hoc committee -- in the spirit of efficiency, which we've also tried to accomplish here, may I and my colleague be excused for the remainder of the hearing?

THE COURT: Yes, certainly.

MR. HARVEY: Thank you, Your Honor.

THE COURT: I always like to save money.

MR. HACKMAN: Good afternoon, Your Honor, Ben Hackman for the U.S. Trustee.

The U.S. Trustee asked for a status conference today to briefly discuss Morgan Lewis's fees in the Emergent Fidelity Technologies LTD. case, it's Number 23-10149, *vis-a-vis* the FTX fee examiner.

Your Honor approved Morgan Lewis's retention as Emergent's bankruptcy counsel on April 10th, 2023, effective as of Emergent's petition date. On September 20th, 2023, Your Honor entered an order approving Morgan Lewis's first interim fee application, that's Docket Item 2647. Although the fee examiner order does not currently cover the Emergent debtor's professionals, that order preserves the U.S. Trustee's right to request a status conference with the Court regarding an extension of the fee examiner order to cover Morgan Lewis's fee applications as counsel for Emergent.

Morgan Lewis has now voluntarily agreed to the U.S. Trustee's request that Morgan Lewis's fee applications to the Bankruptcy Court beyond Morgan Lewis's retainer will be subject to the FTX fee examiner order. This agreement does not apply with respect to any of Emergent's offshore professionals.

Our office understands that Emergent expects to file in the near future a proposed cross-border protocol that will address the compensation of Emergent's offshore professionals. The U.S. Trustee's right to object to the proposed protocol, including whether offshore professionals should be subject to the fee examiner order, is reserved.

Emergent's counsel authorized me to communicate this to Your Honor. Unless Your Honor has any questions, that's all I have.

THE COURT: No questions. Thank you.

MR. HACKMAN: Thank you, Your Honor.

THE COURT: Anyone else wish to be heard on that issue?

(No verbal response)

THE COURT: All right, thank you.

Okay, next. Do you want to do the --

MR. GLUECKSTEIN: We can go -- would you like to proceed with the motion to dismiss or the protective order motion, Your Honor?

THE COURT: Let's do the protective order motion.

MR. GLUECKSTEIN: Okay, then we'll --

THE COURT: That probably won't be as long as the other one because there's two motions there, right, a motion to dismiss and a motion -- well, two motions to dismiss, one for --

MR. GLUECKSTEIN: Yeah, although I think one is --

THE COURT: -- lack of personal jurisdiction.

MR. GLUECKSTEIN: -- one is substantive on the 12(b)(2) issue, I'm not sure the other one is, but, yes, they are both -- but we'll turn it over to counsel for the movants on the protective order.

THE COURT: Okay. Mr. Arbogast?

MR. ARBOGAST: Good afternoon, Your Honor. Gregory Arbogast, on behalf of Brandon Williams in the

adversary proceeding of FTX Trading and Maclaurin Investments against Brandon Williams, *et al.*

If it pleases the Court, my colleague Lawrence Gebhardt will be arguing the motion. He's admitted *pro hac*.

THE COURT: Okay. Thank you.

MR. GEBHARDT: Good afternoon, Your Honor.

This suit, at least as it pertains specifically to Brandon Williams, a defendant, alleges actual and constructive fraudulent transfers by FTX Trading and the Antiguan corporation in its acquisition of Digital Assets, a Swiss corporation in July and November of 2021. The defendants have all moved to dismiss for lack of subject-matter jurisdiction and the Court, due to the improper and unauthorized filing of the bankruptcy petition, which, of course, then carries over to the institution of the adversary proceeding and the lack of subject-matter jurisdiction of this Court to adjudicate the adversary proceeding.

All of the defendants have moved to dismiss for failure to state a claim. Brandon Williams, specifically, has alternatively moved for summary judgment as to the counts pertaining to him. Those motions are not a basis, at least as to Brandon Williams, for requesting a protective order, but solely the aspect pertaining to the lack of subject-matter jurisdiction.

Now, Brandon Williams has moved for a protective

order under Rule 26(c) to defer discovery until the Court has ruled on the pending motions to dismiss for lack of subject-matter jurisdiction. The other defendants, as of yesterday, joined in this motion and they are the principal proponents of the lack of subject-matter jurisdiction of the Court in motions they filed in the main bankruptcy case, as well as a portion of their motion in the adversary proceeding.

The basis of the motion for a protective order is Federal Rule 26(c)(1) to avoid undue burden and inordinate expense that the discovery will entail until the subject-matter jurisdiction issue has been resolved.

The case is at its inception. The complaint has been filed and responded to with motions. A case management plan was agreed to before the motions were filed. Initial disclosures have been made. The plaintiffs have filed discovery requests that have been timely responded to by all of the defendants; basically, document-production requests. The other defendants have served discovery on the plaintiffs. Brandon Williams has prepared it, but has not filed it. We have extensive document requests, interrogatories, and requests for admission to file once there's a resolution of the motion for a protective order.

The motions to dismiss have been filed, but there's been no response yet; instead, the debtors, in both the main case, have requested additional time to respond to

the lack of subject-matter jurisdiction for the filing of the bankruptcy petition. Under the case management order, their response to the motions to dismiss, including subject-matter jurisdiction, in this case, will not accrue until December 1.

The discovery in this case will be extensive and will be expensive. Digital Assets, the purchased entity, is a Swiss corporation, subject to Swiss law, including the blocking statute, which is Article 271 of the Swiss Criminal Code. Even though Digital Assets may be owned by a non-Swiss entity, that criminal statute still applies and can prevent us from getting documents that are pertinent to the acquisition and to the operation of Digital Assets before it was acquired by FTX and after it was acquired by FTX and operated for a year.

There are other entities that are involved; all European based. For instance, CM Equity, a German brokerage, which might be analogous to Charles Schwab, and RDNA, which -- or excuse me -- KDNA, which is a brokerage that was -- a Cyprus-licensed brokerage, which was acquired, as contemplated in the original acquisition, post Digital Assets' purchase by FTX Trading.

There are many individuals who have personal knowledge and will need to be deposed. Reliable contact information is not available in most of them and will require extensive investigation to locate just where they are so that

subpoenas, or other deposition notices, and so on, can be served. They're all over the United States, to the extent they're United States citizens. Daniel Friedberg, who was FTX's general counsel, representing FTX in the acquisition is based in Washington. Can Sun, general counsel with FTX, apparently is located in the Bahamas.

In Europe, the people that are there get the protection of the European General Data Protection Regulation, which can be very tricky to comply with and will probably involve letters rogatory through the State Department to get them to even come to a discovery proceeding.

In the Caribbean, which includes Bahamas and Antigua, there are people that will need to be deposed.

Sam Bankman-Fried, who's a critical witness in this case, is in prison. He's testified, so, probably, he can't take the Fifth Amendment, but we've now got to figure out how to get a deposition in the prison system.

And, for instance, in his testimony, one of the most ridiculous assertions in the complaint is that Samuel Bankman-Fried was a personal friend of Brandon Williams and paid exorbitant, excess amounts of money to financially benefit Brandon Williams. Bankman-Fried will testify to the contrary. Those two have never met in person. They're never spoke on the phone one-on-one. Their only interaction,

basically, was the FTX deal, but we must depose him.

We must depose the other FTX people who have testified in the criminal proceedings and are available and around.

Attorneys in this action have Sullivan & Cromwell will need to be deposed. Mr. Dietderich, for example, who contends that FTX was insolvent at the time the bankruptcy petition was filed, 5 days earlier, is ensuring the creditors committee attorney in the Voyager bankruptcy in an email that FTX is financially solid as a rock. So we want to find out what happened in that year between November of 2021 and October of 2022, that caused FTX to become insolvent. What happened? What was the change and what justified the statement that you made?

There are experts that will need to be both, interviewed and deposed; experts that pertain to the transaction, such as BDO, which did a valuation of the data acquisition at the insistence of FTX shortly after the acquisition was made and found, basically, reasonable equivalents. Prager Metis, an international accounting firm, did audited financial statements of FTX and those financial statements did not show insolvency.

There's other evidence of solvency of FTX, such as Mr. Ray's first day declaration, in which he describes solvency to FTX Trading. The parties will be retaining

experts to supplement those transactional people that were part of the transaction.

Other potential purchasers of data existed and they will need to be deposed because they essentially were prepared to pay roughly the same price as FTX paid, except the deals couldn't go through because FTX already owned 20 percent and didn't want competitors owning part of the transaction.

The bottom line is that the discovery in this case will be expensive, it will be time-consuming, and it will involve extensive travel.

Now, Federal Rule of Civil Procedure 26(c)(1) authorizes the Court to enter an order to protect a party from undue burden or expense -- burden or expense, and that's the basis for the request that discovery be delayed. Just filing -- we readily concede that just filing a motion to dismiss is not sufficient to get a motion for a protective order. That is why when Brandon Williams filed his motion to dismiss or for summary judgment, we did not ask for a protective order to defer discovery because a motion to dismiss for failure to state a claim depends on the interpretation of words. Summary judgment motions can question whether a material fact is or is not in genuine dispute, did not justify.

But subject-matter jurisdiction, if it does not

exist, ends the case. It's all over. If it's all over, you don't have to do all of those expensive, burdensome things.

Now, to get the motion for protective order, we clearly, and we acknowledge we must establish good cause. The grant is in the discretion of this Court based on an evaluation of the cause that's been shown and the reasonableness of the relief that's sought.

Now factors that are regularly considered in making this decision: the strength of the motion to dismiss. I believe it's not only strong that subject-matter jurisdiction is lacking, but basically, it's uncontested. The facts are not in dispute. Mr. Dietderich put an affidavit into the record when he was trying to confirm his retention saying, Gee, I didn't have time to get the board of directors to approve the filing of the bankruptcy petitions or the appointment of Mr. Ray.

There may have been a hundred corporations, but FTX was the main one. They were there. He never looked, but he knew that he had to do that, yet he didn't do it; instead, he has Bankman-Fried execute an omnibus corporate power that essentially granted omnipotent powers to John Ray, even though Bankman-Fried did not have the authority to do that.

The law is clear from Wago and the Supreme Court case of Price v Gurney that's been cited as to what the need is for that corporate approval and authorization under the

organizational documents and under local law. So the issue is not one of fact that's going to have to be resolved by this Court, but it's one of law. Basically, under Antiguan law, could John Ray be unilaterally appointed by Samuel Bankman-Fried without authorization from the board of directors, despite what the International Business Act provides and despite what the charter and bylaws of FTX provide.

The grant of this motion will end the case. It will all be over and there will be no discovery needed, nothing further going on. The plaintiffs, furthermore, will suffer no prejudice if there's a delay in discovery.

So if discovery is delayed for a month or two months, how does that cause distinct prejudice? The plaintiffs do not need discovery to respond to the motion to dismiss. They don't need to depose anybody. The bylaws are there. There's no dispute as to what they are.

Mr. Dietderich is around. He can say what he did and why he did it representing the corporation. The delay will be slight, unless the motion is granted, and then the case will be at an end.

The extensive nature of the discovery, which we've already said will require an extensive time commitment and a huge expense, not just on the part of the defendants, but also on the part of the estate. I mean, they've got to --

the stay will be contested and the depositions will be taken and a lot of money will be spent having Sullivan & Cromwell participate in the discovery.

The elements of the claim are extremely involved. Lots of people there, the big factual disputes, if it has to go, and if those factual disputes don't have to be resolved in discovery, then all will be better.

Now, I'd like to just briefly respond to some of the *ad hominem* opposition that was filed by FTX. It recites events that were prior to discovery to our, to Brandon Williams' discovery of the lack of subject-matter jurisdiction of the Court. That issue was raised by the other two defendants after extensive research and, frankly, I didn't come upon it until we saw their motion to dismiss in the main bankruptcy case and in the adversary proceeding, and it looked irrefutable.

So, with that, we joined in the motion in the main case and filed an additional motion in this case because motions challenging subject-matter jurisdiction may be filed at any time, even on appeal after a case has been tried.

Williams has timely responded to the discovery served upon him under the Federal Rules. The defendants have our response and we've said we will produce the documents promptly if the Court denies the motion for protective order or denies the motion to dismiss. We're prepared to do that,

if necessary.

An argument was made that, gee, they said you have 30 days to produce all of these documents, which is what their discovery request said. That's not the Federal Rule. Federal Rule 36 says we have 30 days to respond in writing and a reasonable time and place for the production of documents is what to be decided. FTX, through its lawyers, doesn't get to dictate when and where the documents are produced. We have responded to it.

THE COURT: There's a case management order in place.

MR. GEBHARDT: Yes, there is a case management, but the case management order was discussed and negotiated before the motion to dismiss for lack of subject-matter jurisdiction was filed. And, frankly, we did very little negotiating on the case management order; most of it was by the other defendants. We were prepared to file a motion to dismiss in September, when the Rules normally provided for it, but the other parties asked for the motions to dismiss to not be due until the end of October. And when that happened, we got a copy of the financial statements and the BDO valuation modified the motion to also include an alternative for summary judgment.

But there are dates that have been agreed upon if there's a stay of discovery. Maybe they could be adjusted or

maybe they need to -- maybe they could still be complied with. The trial is not, under the schedule that's there, would not be occurring until 2024, the end of 2024.

The defendants contend -- excuse me -- the plaintiffs contend that there was clear authority for John Ray, yet, if that authority is so clear and so undisputable, why did they need an extension of time to respond to the motion? They do and they're not going to be able to substantively, correctly respond.

They never addressed the merits of the motion for a protective order in their opposition; instead, what they do is they argue things that are irrelevant to it based on, basically, insults and disparagement, not reasoning or a basis that the motion should not be granted.

So, we're here to ask that the motion for stay, a temporary limited stay of discovery be granted because good cause exists and the relief requested is reasonable. Neither the defendants, nor the estate should have to bear the burden of extensive time being spent on a case that may end or inordinate expense pursuing discovery that may be of no use.

Thank you, Your Honor.

THE COURT: Thank you.

Debtors?

By the way, Mr. Gebhardt, I don't see where you signed in. Did you and your -- did you guys sign in?

MR. GEBHARDT: (Indiscernible.)

THE COURT: No, that just to get into the building.

This is for a record of who appeared at the hearing. You can take it back over there and then bring it back.

MR. KEANE: Your Honor, would you like to hear from supporting parties --

THE COURT: Oh, yeah.

MR. KEANE: -- who filed a joinder before debtors?

THE COURT: Yeah, go ahead.

MR. KEANE: Okay. I'll try and be brief.

For the record, Peter Keane of Pachulski Stang Ziehl & Jones, on behalf of defendants Lorem Ipsum UG, Patrick Gruhn, and Robin Matzke.

Your Honor, our co-counsel at Morrison Cohen, Heath Rosenblat, is by Zoom in case I miss anything, Your Honor, and may wish to speak up.

But we echo Mr. Gebhardt's comments regarding the motion for stay and we filed a joinder at Adversary Docket 39. Your Honor, we joined in the motion for stay, primarily, from a logistics standpoint. As Mr. Gebhardt mentioned, we filed a motion to dismiss in the adversary on October 27th, as required by the case management order, and on that date, we also filed two motions to dismiss, the

Chapter 11 cases of FTX Trading Ltd. and Maclaurin Investments, Ltd. Those are at main case docket numbers 3399 and 3400. Those motions to dismiss have not been fully briefed.

For the main case motions to dismiss, we've -- I guess the debtors said in their opposition, we've agreed to a briefing schedule, whereby the debtors would respond to those motions by December 13th and our reply would be due by January 5 and with the expectation of having a hearing at the January 17th hearing on those motions.

Your Honor, the request for a stay here is very, very limited and it's for a specified purpose. It's to permit the Court to first consider the dispositive issue of subject-matter jurisdiction that we've raised and we believe a stay makes sense for purposes of judicial economy and to save time and expense for both, the estates and, of course, our clients, and the other defendant, Mr. Williams.

With the hearing set for January 17th, all the motion seeks is a stay for approximately 60 days. I believe the proposed order on the motion for stay asked for an additional 30 days beyond when the Court rules. So, approximately, 90 days or so. If the motions to dismiss are denied, of course, the cases will go on, likely, for years, Your Honor.

Mr. Gebhardt did a very good job of articulating

why discovery is very complex; of course, there are other factors the Court considers when assessing a motion for stay. And I think for purposes of today, the Court can look primarily at the prejudice to the plaintiff, which we don't believe there is any here for today's purposes, or, primarily, the reasons I just mentioned.

In addition, Your Honor, I'd just briefly like to respond to some of the statements in the debtors' opposition to clarify the record and highlight a few points and I'll try to be brief. To begin, I don't think any of us really understand some of the accusations the debtors made in their opposition and where it's coming from. The debtors used terms to describe the defendants' conduct such as "gamesmanship" and there are suggestions of bad faith, but we think those accusations are misplaced and incorrect and I'll explain why.

Our clients filed proofs of claim on June 30th of 2023 and the debtor sued us two weeks later in July. And as any litigator knows, Your Honor, the first thing we tended to focus on was negotiating the case management order for the litigation, and we did, but we did so largely in a vacuum. The case management order was entered August 23rd and it set a deadline for the motion to dismiss in the adversary proceeding on August 27th.

So we didn't even begin the serious analysis until

late August, early September, and we got to work doing what any good lawyers would do, which would be analyzing the facts and causes of action asserted, investigating potential defenses, and, generally, doing a deeper investigation. And it was at that point that we discovered the "lack of a corporate authority" issue that we raised in the motions to dismiss. And as Your Honor knows, and as Mr. Gebhardt mentioned, that's a subject-matter jurisdiction defense, which can be raised at any time by anyone, including the Court on its own. We believe it's a meritorious defense so we included it in the motion to dismiss that we filed in the adversary and also as the basis for the main case motions to dismiss.

So that defense came about organically. We were not hiding the ball or trying to sandbag the debtors in any way. We raised it timely when it became relevant and we did so in good faith.

The debtors also make some additional suggestions or claims in their opposition, one of which was that we didn't expressly negotiate a reservation of rights in the case management order to file a motion for stay of discovery. And they point to a different adversary proceeding that had such a provision, as if we're omniscient and supposed to know all the nuances of every other litigation.

What the debtors don't say in their opposition is

that we waived it, because they can't. The case management order is silent on that, without the ability to move for a stay, and we believe it's appropriate to move so.

The debtors also indicated that we already enjoyed approximately a hundred days to draft the motions to dismiss without any disagreement about the schedule; the hundred days being measured from the time the complaint was served. But that's not entirely accurate, as I understand it, Your Honor, because the complaint was never formally served. Our clients agreed to waive the service requirements as part of the case management order that would have otherwise been necessary under the Hague Convention, as two of our clients are in Germany, Matzke and Lorem Ipsum. So we could have asserted those rights, but we didn't; we chose to comply with the case management order and waive those and we've complied with the case management order since.

And I raise that simply because I recently had to do that in another case, on behalf of plaintiff, Your Honor, go through Hague Convention service, actually, onto defendants in Germany and it took 18 months. So the litigation could be dragging on even slower than it is right now. So in that context, I don't think the stay request that's being asked of Your Honor is, in the context of litigation, is that much.

And, finally, the case management order dates are

really not compressed. Fact discovery doesn't end until May 17th, 2024. Expert reports start in July. Expert depositions have to be completed in October 2024. We don't even have a trial date set. So all a stay would do, Your Honor, is essentially roll back those deadlines by approximately 90 days or so if Your Honor did grant the stay.

So in the context of the proceeding and within the larger context of the cases, we don't think it's much of an ask and we do think it's appropriate here, Your Honor.

So, unless Your Honor has any questions?

THE COURT: No questions, thank you.

MR. KEANE: Thank you, Your Honor.

MR. EHRENBERG: Good afternoon, Your Honor. Stephen Ehrenberg from Sullivan & Cromwell on behalf of the plaintiffs in this action.

Mr. Gebhardt said that the facts are not in dispute on the motions for dismissal on the basis of a lack of subject-matter jurisdiction. That is simply not accurate. The facts are contested and the plaintiffs will brief that motion on the agreed schedule and demonstrate those factual and legal errors in the motions to dismiss in the main case on the agreed schedule, which is now the same schedule as the schedule for the adversary proceeding motion to dismiss. So no reason those two motions to dismiss couldn't be heard on the same day in the same hearing in January. So we're not

that far away.

Obviously, all of the facts upon which that motion to dismiss is based were known to all stakeholders in this action a year ago when the case was filed. Nothing new has happened. Nothing has changed.

All that the defendants are saying is they didn't discover this purported silver bullet until now and, in fact, Mr. Williams didn't find it until someone else found it for him. And, Your Honor, we submit that is not an excuse for delaying a motion that could have been brought back in August, long before the plaintiffs in this action started expending substantial estate resources to meet their discovery obligations in this case and to prepare to take discovery in this case.

So the notion that no prejudice will happen in the few weeks or months that this stay is in place is, first of all, nonsense. But putting that aside, we have already been prejudiced if the stay is entered, because we have already done a tremendous amount of work which we describe in the brief.

So the bottom line here, Your Honor, is that this motion is egregiously untimely and, from our perspective, it appears that it has been delayed to obtain a tactical advantage and to cause maximum disruption to our case in our efforts to recover assets that have been fraudulently

conveyed to these defendants.

And the parties discussed the possibility of the stay in August -- August 3rd, to be exact -- in a meet-and-confer, our first. The defendants asked for an agreed stay of discovery, pending motions to dismiss for all of the reasons that have been articulated here today, other than subject matter.

And we said, flat, No, absolutely not. We need to move this case forward and we intend to do so expeditiously and we're going to seek discovery in the ordinary course.

Now, the scope of discovery that they describe, I'm not going to try to redefine their scope. They think it is what it is. But whatever they think it is, it hasn't changed since August 3rd. If they thought that they would be prejudiced by engaging in discovery prior to a decision on the motion to dismiss, their time to join issue on that was early August, not after we have done a lot of work that I'll describe.

And during the hundred days that they asked for to respond, we could have easily dealt with this a long time ago and we wouldn't be here today, but they didn't do that; instead, they delayed this motion until days before their discovery responses to us were due, and at a time when, of course, we're working on our opposition to their motions to dismiss.

In between August 3rd and the time that they have filed their motion, there were a lot of events that called for the defendants to raise their hands and say, you know what? Something has happened. We have a new idea. Stop what you're doing. Don't spend anymore estate resources. Let's talk about a stay again.

But they didn't do that; instead, they negotiated a case management order with us and we worked out dates and that was a negotiation. So the idea here, now, that, well, we can just extend them, that's not how a negotiation works. We gave things up. They gave things up. And we reached an agreement. That's why the cases we cite talk about the entering of a scheduling order being important to the issuance of a motion to stay, because those dates should be reliable. Everybody should be able to rely on them, unless something changes.

So they negotiated a CMO with us and that CMO includes a substantial completion date for documents, which is not in May. It's January 31, which is rapidly approaching. And that was a negotiated point. We negotiated hard for a substantial completion deadline because it's important to us to be able to know when we will have most of the documents and begin to plan out our deposition schedule.

So, after negotiating the CMO, and I think Your Honor mentioned that a CMO was in place and would guide when

productions are required, it also requires rolling productions in advance of that substantial completion date. After the CMO was entered, while we certainly did not anticipate a motion to stay, because we kind of dealt with that issue already, we certainly anticipated that the defendants might do something to try to extend the schedule here.

So we wrote them a letter on September 21. Now I think it's interesting that counsel has acknowledged that they discovered the silver bullet in September. We sent them a letter on September 21 and said, the plaintiffs are preparing for discovery. We're doing a lot of work. We're gathering data, gathering documents, processing them, reviewing them, identifying things that are going to be responsive to your requests, figuring out who our custodians are, extending substantial estate resources.

And, we said, we expect you to do the same, because we are going to be prepared to produce documents to you promptly upon the service of data requests on the schedule agreed in the CMO and we don't want to have a situation where we serve our doc requests, you wait 30 days, you serve objections, then we meet and confer and we figure out our search terms and, you know, we're in March before anyone is producing documents.

So we wrote all this out and we asked them at the

end of that letter, we assume you're doing the same. Please confirm that you are, and if you're not, tell us, and tell us why you're not.

So, if they had discovered, at that point, that they had a new motion that they wanted to file and that maybe there was going to be a stay, it was incumbent upon them to say that, at least by then. And maybe we could have joined issue in September, because we've done a lot of work between September and now.

Mr. Gebhardt said the case is at its inception. It's not at its inception; discovery has started. We have a CMO in place. Everybody has served initial disclosures. We have served discovery on non-parties. Those non-parties are now expending their own resources to respond to our discovery requests. We met and conferred with both of those non-parties and worked out what is being done. One of them is actually represented by the same counsel as Mr. Gruhn and Mr. Matzke, so there are no surprises here. A lot of work is being done.

We have served discovery on the defendants. Both have objected. Mr. Williams has granted himself a stay of discovery until this Court decides this motion. It's unclear whether Mr. Gruhn or Mr. Matzke intend to produce in advance of a decision on this motion, but either way, we think that is inconsistent with the law.

The defendants, in fact, have served voluminous discovery requests on plaintiffs, well after the time that they decided that they had another motion to file. They have served 77 requests for documents, 12 requests for admissions, 18 interrogatories. And since the day they arrived, the plaintiffs have been working on responding to them. We have substantial drafts that are in progress and we intend to respond on the due date, which is the day after Thanksgiving, for what that's worth.

So, Your Honor, we've done a lot of work here to prepare for discovery and we are ready today to produce thousands of documents to the defendants. The only reason we haven't, and we have advised them of such, is that they haven't signed a protective order.

Now, there's a protective order under negotiation, but we gave them the opportunity to sign the protective order in the main case in September when we sent them the letter. We said, you know, as part of our preparation, you should sign this order so we can make productions to you. They didn't. Not only did they not raise their hand in September, they did not respond to that letter in any way, shape or form. Nothing. Silence.

So in addition to the thousands of documents that we have identified through our searches and our work, we have also undertaken substantial work to make a document-review

platform available to all of the defendants in all of the avoidance actions that will have certain of the materials that were produced to the criminal authorities in the Southern District of New York and that has taken a fair amount of time and expense, as well. It is up and running and we can grant them access to it today if they had signed a protective order.

We continue to do substantial work to respond to the discovery requests that have been propounded on the plaintiffs and will continue to do so until ordered otherwise or the due date arrives and we respond. All the while, our substantial completion deadline of January 31 is approaching and at no point anywhere in this timeline, until last Wednesday, did the plaintiffs say anything about any change in view on the schedule for discovery, anything about a stay motion, nothing.

So, Your Honor, we think that the delay in bringing this motion, which could have been brought a year ago, at least the underlying motions to dismiss for subject-matter jurisdiction could have been brought a year ago, that alone warrants an inference that this motion is an attempt to gain a tactical advantage, which is improper.

The defendants want to talk about the merits of their motion to dismiss for lack of subject-matter jurisdiction. They cite a lot of cases from New York. I'm

not clear why; there's perfectly good cases in Delaware about the standard to issuing a stay of discovery. And those cases expressly say you don't look at the merits of the motion to dismiss.

I think there's a good reason for that, right, because if the standard was, well, I've got a really good motion to dismiss, everybody would want a stay of discovery, pending the motion to dismiss, and then the Court is going to be in the position of always trying to sort of predict the outcome of the motion.

That's just not what the cases call for. The cases call for an analysis of the prejudice against the moving party -- I'm sorry -- against the non-moving party; the status of the litigation, where it is and where discovery has proceeded; and whether a stay would simplify issues for the trial, which is really about when you're sort of working with multiple litigations and the decision in one would have an effect on the other.

So, really, we think what matters here is what's the status of this litigation? What's the status of discovery? And what's the prejudice to the plaintiffs of granting this stay?

And, Your Honor, we submit that we would be deeply prejudiced by a stay here, given all the work that we have already done, the amount of discovery that has taken place so

far, and from our perspective, if they're right about the scope of discovery, that is a reason to get started, not to delay further.

And, you know, the courts expressly say we should not be looking at the underlying merits. We can look at the Petro case, the Cabot (phonetic) case, the Cipla case that we cite in our brief; all of them stand for that proposition.

Let me see if there's any other notes from -- Your Honor, unless you have questions for me, I think that's all I have. We would ask that the Court deny the motion, order the defendants to begin producing under the CMO, as they're obligated to do, and to deny any requests for an extension of the carefully negotiated schedule, and to award expenses incurred in responding to this untimely motion.

THE COURT: Okay. Thank you.

A brief response?

MR. GEBHARDT: One thing, Your Honor, that the plaintiffs like to gloss over is who the defendants are. Brandon Williams, while he's a defendant, is not the same as the other three defendants. Brandon Williams was gone from the company in November of 2021; the other defendants stayed with the company and had access to what was going on. Brandon Williams' claim was over at that point.

Now, you'll hear about the defendants and they lump Brandon Williams in with everyone else, except there's a

complete distinction much the claims against Brandon Williams, particularly in that complaint that was filed, border on the preposterous. The things like saying Brandon Williams was given millions of dollars because he was a personal friend of Samuel Bankman-Fried are ridiculous. All --

THE COURT: Well, I don't know that, and you're testifying. I don't know any of that.

All I got to go with is what's in the complaint and I've got to accept what's in the complaint as true.

MR. GEBHARDT: Well, I understand that, Your Honor, and we certainly will -- we have a motion for summary judgment, which basically negates that.

But apart from it, when we negotiated or discussed the case management order, we simply had the complaint. We had a due date of September, which -- in September, like the 25th or something, which was, under the Rules after Brandon Williams was properly served, we were prepared to respond to it. When the discussions went on about a case management order, we planned to file a motion to dismiss for failure to state a claim and it didn't seem worthwhile. We thought staying discovery might be a sensible thing to do. We weren't going -- we didn't argue for it.

When the --

THE COURT: Did you respond to the -- why didn't

you respond to the September 21st letter that they sent to you?

MR. GEBHARDT: I don't think I got it. September 21, I'm not even sure we were served then. I mean, we may have been served a letter. Off the top of my head, I can't respond to that at the moment, Your Honor.

But the case management order was negotiated principally by the other defendants and their lawyers, with the exception of a couple minor suggestions we may have made. We didn't argue about anything on it. Now --

THE COURT: But you agreed to it.

MR. GEBHARDT: Well, we agreed to it, yes, because what we saw was a complaint that was facially defective and we believed would not stand on its own.

When they asked for things to carry over until the end of October for responses to be filed, we didn't ask for that, but we agreed to it and that's why we raised the summary judgment motion.

The question about whether subject-matter jurisdiction should have been known to us, remember, this is an Antiguan corporation. We knew Bankman-Fried had principal ownership, but we didn't know the level of his ownership. We didn't have a copy of the corporate charter, which the other defendants were able to get. We had no knowledge of what the international business corporation law was, nor did we see a

need to do that at that time.

We saw a defective complaint and we planned to respond to it and then when we got some information, we converted that both, to the motion to dismiss and the motion for summary judgment.

THE COURT: Have you been preparing to respond to the discovery requests?

MR. GEBHARDT: We filed our response to the motion -- to the document requests. We have documents gathered, yes.

If you told us we had to respond next week, we could produce our documents. Brandon Williams has very little documentation on these things. He was out of the company -- out of the organization. He didn't do the negotiating for the purchase and the second transactions.

Where we're going to get hurt is, not so much in producing what we have, because it's not that large, but all these documents that supposedly the plaintiffs have, we now have to go through them. We've got to go over them.

The other defendants have to produce documents. I haven't seen what they have. All these other things, it's not just what we've got to gather. We've got to go do the reviewing and do the work like that.

And, frankly, these plaintiffs say, Well, gee, look at all the work we've done. They're going to have to do

a lot of additional work. It's not just that, gee, here's some documents. They're all done. It won't work like that.

But we responded. We did what we thought was right when the motion -- the subject-matter jurisdiction motion came up, we looked at it and said there is no way, based on what's been filed, that subject-matter jurisdiction exists in the bankruptcy case or in this court and we're going to join in. And we suggested staying discovery until it's done because it harmed no one and they refused. We filed the motion and we're here.

But if the Court says you've got to go forward and, frankly, our motion -- our response to the document requests said if the Court denies the motion for a protective order, we'll produce documents. But we don't get, under the Federal Rules, they don't get to tell us how many days after our 30-day response is filed, we have to give them the documents. They don't get to tell us where we have to give them. We don't have to deliver them to New York, which is what the document request said. We'll work on and arrange -- we have an e-discovery person that can exchange the platforms. But wasting money should not be -- it's not in our best interests and it certainly shouldn't be in the best interests of the estate.

So we'd ask the Court to grant this limited protective order and keep us all from wasting time, money,

and effort, and undue burden and expense in the transaction. Thank you.

THE COURT: Thank you.

A response from the other defendants?

MR. ROSENBLAT: Your Honor, Heath Rosenblat of Morrison Cohen on behalf of Patrick Gruhn, Robin Matzke, and Lorem Ipsum UG.

Here, do you want to -- do you have something?

THE COURT: Go ahead, Mr. Rosenblat, briefly.

MR. ROSENBLAT: Thank you, Your Honor.

THE COURT: Well, I don't know why we're switching counsel here on making the argument, but I'll give you like 30 seconds.

MR. ROSENBLAT: The reason, Your Honor, is because Mr. Keane was not engaged at the time that the CMO was negotiated and I thought there were a few points that could be highlighted for Your Honor. That's all, Your Honor.

So very, very quickly. The dates in the CMO and the substantial compliance of January 31 is under Section, I think it's (B)(6) of the CMO, is with respect to the initial requests and that is the first request. I think it's clear that this is going to be a very big case and that there could be a number of requests.

So that January date is kind of a false negative -- it's a false positive as to the time frame in

which things are going to be produced. As Mr. Keane laid out, fact discovery ends at the end of May and expert discovery is -- May 2024 -- and expert discovery ends in October of 2024. So there still is significant time out there.

With response to why, I guess Mr. Ehrenberg said no one replied to his letter. There was complete silence. That's inaccurate and their open papers highlight that at page 55 of 58 in 42-2, which is Mr. Ehrenberg and I had a phone conversation about it. The September 21 letter is pretty much a statement of what they're doing and while they're -- there's a statement at the end of it about what, you know, what's going on, on your end? It really wasn't asking a question of us. It was telling us what we were supposed to do. It didn't need responded to and that is what I told Mr. Ehrenberg in our particular phone call. So it was responded to; it just wasn't responded to in writing.

As to the protective order, we submitted a redline to them and are waiting on comments back. It's being negotiated. No deadline in the CMO has been missed. Everything has been complied with.

And I just want -- one last point, Your Honor. The emphasis on the one year, and everybody -- this case has been going on for one year. We fully appreciate that and we applaud the herculean effort of Sullivan & Cromwell and what

they've done to this date. We were not involved in this matter -- I need to emphasize this -- we were not involved in this matter until July.

The defense of subject-matter jurisdiction, as all litigators know, developed organically as we were putting our papers together. There was no looking at this case a year ago. There was July. And as Mr. Keane represented to the Court, the first month and a half was negotiating the CMO and getting things in place like that, and then, once we got into briefing, that's when it developed, Your Honor.

Those are the only points I would like to highlight for the Court. Thank you for the opportunity to speak.

THE COURT: All right. Thank you.

MR. ROSENBLAT: Thank you, Your Honor.

THE COURT: All right. I'm going to deny the motion for protective order. I think the CMO was already in place. The parties agreed to it. Discovery has already begun. While documents have not been exchanged, the debtors have indicated that they have undertaken a lot of work in order to respond to discovery requests that were issued by the defendants.

The defendants have indicated that they have prepared or are prepared to produce documents in accordance with the case management order and, therefore, I find that

there would be prejudice to the debtors, the plaintiffs if they had to stay this.

And I also, I agree with the comment that if the discovery is as complex as it's going to be, then it needs to get started now. There's no reason to delay it.

All I have in front of me at this point is the motion to dismiss and the brief in support. I haven't seen the response. So even if I had to consider whether the merits of the motion are valid or not, I don't have any basis to do that.

So at this point, the motion is denied. I'm not going to award fees or costs, but I will direct the defendants to respond to discovery as set forth in the CMO. If that means you have to produce documents on a rolling basis beginning next week, then do it.

Anything else?

(No verbal response)

THE COURT: The parties should meet and confer and submit a form of order under COC.

COUNSEL: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: May we be excused, Your Honor?

THE COURT: Yes, you may be excused. Thank you.

All right. Let's take a short recess before we go to the last item on the agenda and we'll go from there.

We'll reconvene at -- let's make it -- let's take a 10 -- well, we've got quite a few people. Let's take -- we'll reconvene at 3:30. That clock is wrong.

UNIDENTIFIED SPEAKER: It is wrong, Your Honor.

THE COURT: Thank you.

(Recess taken at 3:10 p.m.)

(Proceedings resumed at 3:30 p.m.)

THE COURT: Whenever you're ready.

MR. KORNFELD: Good afternoon, Your Honor. Alan Kornfeld, Pachulski Stang Ziehl & Jones, for PLS Canada on Number 13. With me at counsel table is my partner James O'Neill.

MR. O'NEILL: Good afternoon, Your Honor.

MR. KORNFELD: And also at counsel table, Your Honor, I have the pleasure of introducing the Court PLS Canada's founder and present CEO, Dr. Edward Mills.

THE COURT: Welcome.

MR. KORNFELD: Your Honor, we're happy to do this any way you'd like to do it, but we do have evidence and the evidence, in connection with Motion 13 from PLS Canada's standpoint is Dr. Mills' declaration, which is at Docket 36, and his supplemental declaration, which is at Docket 46, and Exhibits 1 through 10, which are the exhibits that were referenced in connection with the original declaration at Docket 36 and Exhibits A through I, which are attached to the

supplemental declaration. All of these exhibits are on the witness and exhibit list that we submitted to the Court.

I did have the opportunity to confer with Ms. Wheeler before the hearing and there are no objection to any of those exhibits. I would add, Your Honor, with respect to the exhibits admitted by the debtors in opposition, there are no objections by PLS Canada to those exhibits. So we don't have any evidentiary disputes today.

In terms of testimony, we would proffer Dr. Mills' original declaration at Docket 36 and supplemental declaration at Docket 46 as his direct testimony and move those declarations and his exhibits into evidence. He is available for cross-examination and counsel has advised that they wish to cross-examine.

THE COURT: Okay. Any objection?

MS. WHEELER: No, Your Honor.

THE COURT: Okay. The declarations and the exhibits are admitted, without objection.

(Mills Declaration received in evidence)

(Mills Supplemental Declaration received in evidence)

(PLS Canada's Exhibits 1 through 10 received into evidence)

(PLS Canada's Exhibits A through I received into evidence)

MR. KORNFELD: Your Honor, would you like

Dr. Mills to take the stand?

THE COURT: Yes, let's go ahead and do the cross and we'll go from there.

Dr. Mills, can you please come up, take the stand, and remain standing for the oath.

THE CLERK: Please raise your right hand.

Please state your full name and spell your last name for the court record, please.

MR. MILLS: Edward Joseph Mills, M-i-l-l-s.

EDWARD J. MILLS, PLS CANADA'S WITNESS, AFFIRMED

THE WITNESS: I do.

THE CLERK: You may be seated.

Your Honor?

THE COURT: You may proceed.

MS. WHEELER: Good afternoon, Your Honor.

Stephanie Wheeler from Sullivan & Cromwell for the FTX debtor plaintiffs. I apologize, I'm a bit under the weather, so I will try to keep my voice up. I have also lived far too much of my life in New York, so I speak too fast. So please let me know if you need me to slow down.

Your Honor, may I approach to hand the Court and Mr. Mills a copy of the binders of exhibits I intend to use on his cross-examination?

THE COURT: Yes, please.

THE WITNESS: Thank you.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MS. WHEELER:

Q Okay. Mr. Mills, if you'll please turn to Tab 1 of the binder. It's a copy of your first declaration, dated September 15th, 2023, that was submitted in support of PLS' motion to dismiss for lack of personal jurisdiction; is that correct?

A (No verbal response.)

Q You have to verbalize your answer.

A Yeah, that's correct.

Q Okay. And you may want to move the microphone closer to you. There you go.

Okay. Now, in submitting your declaration, you endeavored to make sure that the statements were accurate, correct?

A Correct.

Q You didn't want to make any misstatements in your declarations submitted to the Court, correct?

A That's correct.

Q If you turn to page 6 of your declaration, the last page, that's your electronic signature on the declaration; is that right?

A It is.

Q And you understood that in signing this declaration,

you declared under penalty of perjury that to the best of your knowledge, information, and belief, the information in the declaration is true and correct, right?

A That's correct.

Q Okay. We'll do the same with Exhibit 2, which is your supplemental declaration, dated October 6th, submitted in connection with PLS' reply brief; is that accurate?

A That's correct.

Q Okay. And as with your first declaration, you endeavored to make sure the statements in the supplemental declaration were accurate, correct?

A Correct.

Q You didn't want to make any misstatements in your supplemental declaration, correct?

A That's correct.

Q And on page 10 of Tab 2 of your supplemental declaration is your electronic signature, correct?

A That's correct.

Q Again, in signing the supplemental declaration, you declared under penalty of perjury that to the best of your knowledge, information, and belief, the foregoing information is true and correct, right?

A That's correct.

Q Okay. Mr. Mills, I'd like to begin by asking you some questions about the PLS leadership team, okay.

If you'll turn to Tab 2, which is your supplemental declaration and go to paragraph 12, please. It's on page 5. In the second sentence, you state:

"PLS Canada's leadership team, headed by me and Mr. Zimmerman, until his departure in May 2023, has been based in Canada and includes chief operating officer Dr. Jamie Forrest and CFO Chris Clarke; both of whom are Canadian citizens and residents."

Do you see that?

A Yes.

Q That wasn't the composition of the PLS leadership team as of June 1st, 2023, was it?

A No, it was not.

Q And that wasn't the composition of the PLS leadership team as of July 19th, 2023, when the complaint was filed?

A That's correct.

Q Okay. If you'd go to paragraph 13 of your supplemental declaration, just the next paragraph, the parenthetical at the very end of paragraph 13 says:

"For example, Bob Battista, Twanna Davis, and Katie Winter do not hold executive leadership positions with the company."

Do you see that?

A Yes.

Q And then staying on paragraph 13, you say in a

parenthetical four lines up from the bottom of paragraph 13:

"For example, Melissa Bomben is no longer with the company."

Correct?

A That's correct.

Q Is it your testimony that Melissa Bomben did not hold an executive leadership position at PLS during the time that she was at the company?

A No, she did.

Q Okay. If you'll go to paragraph 10 of your supplemental declaration, the last sentence of paragraph 10 says:

"He," referring to Dr. Mark Dybul, "is not a member of management or an employee of PLS Canada."

Do you see that?

A That's correct.

Q Okay. Now, I'd like you to turn to Tab 3 of the binder. It's a June 1st, 2023, email attaching a document that you sent to debtors' investment bankers at Perella Weinberg Partners and debtors' counsel at Sullivan & Cromwell.

Do you see that?

A Yes.

Q Okay. In the email at the bottom, Sam Saferstein of Perella Weinberg Partners, the debtors' investment bankers

emailed you and Michael Zimmerman, who, until May of 2023, had been the CEO of PLS; is that correct?

A That's correct.

Q And in the second paragraph of this email, Mr. Saferstein asks for a call to discuss Latona's $50 million investment in PLS and to learn more about PLS, correct?

A Correct.

Q And in the top email you reply to Mr. Saferstein that you'd be delighted to discuss that with him, and in the last line you say:

"I am attaching a deck here that I hope will be helpful to you to learn more about the company."

Do you see that, sir?

A Yes.

Q And if you look at the line and sort of email header, the to/from/CC part of the email where it says "attachments," are you following me?

A Yes.

Q Okay. The attachment to your email is entitled "PLS overview June 1, 2023.PDF."

Do you see that?

A Yes.

Q And that attachment, "PLS overview June 1, 2023" is the presentation deck that's the rest of Tab 3; is that correct?

A That's correct.
Q Okay. So if you turn to page 34 of the presentation deck at Tab 3, page 34 is entitled "leadership team."
Is that correct?
A That's correct.
Q And the logo of PLS is in the upper left-hand corner on that page, correct?
A That's correct.
Q Now, Bob Battista is listed as a member of the PLS leadership team, correct?
A In this slide, yes.
Q In this slide.
And he was the chief strategy and commercial officer of PLS, correct?
A Correct.
Q And Bob Battista resides and works in the U.S., correct?
A That's correct.
Q Twanna Davis is listed as a member of the PLS leadership team on this slide, correct?
A That's correct.
Q And she's the chief of clinical operations, correct?
A That's correct.
Q And Ms. Davis resides and works in the U.S., correct?
A That's correct.

Q And Melissa Bomben is listed as a member of the PLS leadership team on this slide, correct?
A Correct.
Q And she was the chief operating officer at the time, correct?
A That's correct.
Q And she resided in the U.S., correct?
A Correct.
Q And Mark Dybul is listed as a member of the PLS leadership team on this slide, correct?
A Correct.
Q And he's the executive chairperson at PLS?
A Correct.
Q And Mr. Dybul -- sorry -- Dr. Dybul resides and works in the U.S., correct?
A Correct.
Q And Chris Clarke is not listed as a member of the leadership team on this slide, correct?
A Correct.
Q And James Forrest is not listed as a member of the leadership team on this slide, correct?
A Correct.
Q Okay. If you'd turn to Tab 4 of the binder, this is a copy of a PLS press release dated May 23rd, 2023, titled, "Bob Battista joins Platform Life Sciences as EVP, chief

strategy and commercial officer."

Do you see that?

A I see it.

Q And the title of the press release says, "Bob Battista is joining as an EVP."

That's executive vice president, right?

A I presume so.

Q Okay. I'd like to direct you to the second paragraph of the press release, the first sentence. There's a quote from you that says:

"I've worked with Bob Battista for over a decade and I'm thrilled that he has joined the executive leadership team at PLS, said Dr. Ed Mills, founder and CEO, of Platform Life Sciences."

Do you see that?

A I do.

Q Okay. I'd like you to now turn to Tab 6 of the binder. This is a printout from the "About us" page from the PLS website that was printed on September 26th, 2023. You can see that date in the upper left-hand corner.

Do you see that, Mr. Mills?

A I do.

Q And just to orient you -- sorry -- September 26th, 2023, was three days before plaintiffs filed their opposition to PLS' personal jurisdiction motion.

Now if you turn to page 3 of 8 and go to the very bottom of the page, you'll see the heading "Our team."

Are you with me?

A I am.

Q Okay. And if you turn to page 4, 5, and 6, it lists six PLS employees who were part of "Our team."

Do you see that?

A I do.

Q And on page 4, Mark Dybul is listed on the "Our team" page of PLS' website as of September 26th, 2023, correct?

A Correct.

Q And he lives and works in the U.S.?

A Yes, he does.

Q And Melissa Bomben is listed on the "Our team" page of PLS' website as of September 26th, 2023, correct?

A That's correct.

Q And she lives in the U.S., correct?

A Yes, she does.

I'm not exactly sure if she was with us at that time.

Q Okay. Bob Battista is listed on the "Our team" page of PLS' website as of September 26th, correct?

A Correct.

Q He lives and works in the U.S., correct?

A That's correct.

Q And Twanna Davis, on page 5 -- 6 -- page 6 is listed on

the "Our team" page of PLS' website as of September 26th, correct?

A Correct.

Q And she lives and works in the U.S., correct?

A Correct.

Q And finally, on page 6, Katie Winter is listed on the "Our team" page of PLS' website as of September 26th?

A Correct.

Q And she lives and works in the U.S.?

A Correct.

Q Now, if you'll turn to Tab 7 of the binder, please, this is a printout of the same "About us" page of the PLS website that we just looked at, at Tab 6, except this version was printed on October 7th, 2023, as you can see in the upper left-hand corner, okay.

And to orient you, October 7th, 2023, is the day after you executed your supplemental declaration that we looked at, at Tab 2. Agree?

A Correct.

Q Okay. If you look at the bottom of page 3 of 7, again, you'll see the "Our team" heading of the PLS website as it existed on October 7th, 2023.

Do you see that?

A Yes.

Q And then on pages 4 and 5, it lists four members of

"Our team" as of October 7th, 2023, correct?
A Correct.
Q So PLS removed Bob Battista from the "Our team" page of its website sometime between September 26th and October 7th, 2023, correct?
A Correct.
Q And PLS removed Twanna Davis from the "Our team" page of its website during the same period of time, correct?
A Correct.
Q And PLS removed Katie Winter from the "Our team" page of its website during the same period of time, correct?
A Correct.
Q And Bob Battista, Twanna Davis, and Katie Winter all live and work in the U.S., correct?
A Correct.
Q And at page 5, PLS added Jamie Forrest to the "Our team" page of its website sometime between September 26th and October 7th, 2023, correct?
A Correct.
Q And PLS also added Chris Clarke to the "Our team" page of its website during the same period, correct?
A Correct.
Q And Jamie Forrest and Chris Clarke are both Canadians, correct?
A Correct.

Q Okay. I'd like to switch gears and turn to the transfers of funds from plaintiffs to PLS. If you'll turn back to Tab 1, which is your original declaration and go to paragraph 10, please, three lines up from the bottom, you state that, "the funds from Plaintiff FTX Trading were from a non-U.S. bank account."

Correct?

A Correct.

Q And if you go to paragraph 13, three lines up from the bottom, again, you state that, "the funds from Plaintiff Alameda were from a non-U.S. bank account."

Correct?

A Correct.

Q And in paragraph 15, you state three lines up from the bottom that the funds from Plaintiff Alameda were from a U.S. bank account, correct?

A It must be.

Q Okay. Mr. Mills, are you aware that the plaintiffs included in their opposition papers, evidence that each of these transfers originated from a plaintiff bank account located in the U.S.?

A I was not.

Q But you're aware of that now?

A You just told me.

Q Okay. Well, did you not see plaintiffs' papers?

A I did, but I'm not aware.
Q Let me ask it a different way.
As you sit here today, Mr. Mills, you don't have any basis to dispute that the transfers were, in fact, from bank accounts of plaintiffs that were located in the United States?
A As I sit here today, it has not been my knowledge and I am not aware that that occurred.
Q That that occurred, meaning that the money came from --
A That the money came from a --
Q -- a U.S. bank account?
A -- U.S. bank account.
Q You don't know where the money came from is what you're saying?
A I was not CEO at the time.
Q Okay. You don't dispute that each of the transfers to PLS was in U.S. dollars, correct?
A Correct.
Q Okay. If you turn to Tab 2 of your supplemental declaration and go to paragraph 4, please, the very last sentence of paragraph 4 says:
"PLS [sic] had no hand in directing the process by which the funds flowed into its Canadian bank."
Do you see that, sir?
A I do.

Q And if you go to Tab 9, please, the top email, it's an email from you to an FTX group employee on January 31st, 2022.

Do you see that?

A I do.

Q And if you turn to the third page of Tab 9, you attached to your email an invoice for a $3.25 million philanthropic gift from FTX Trading to PLS, correct?

A Possible. I'm not sure.

Q What part about that are you not sure about?

A No, it must be.

Yes, that would be correct.

Q Okay. At the bottom of the invoice, you included wire instructions for the transfer from FTX Trading to PLS, correct?

A Correct.

Q You don't dispute that you sent plaintiffs wire instructions directing plaintiffs to send U.S. dollar transfers through Wells Fargo as a correspondent bank, correct?

A I do not dispute that.

Q Okay. If you turn to Tab 10 of the binder, please, this is a February 3rd, 2022, email that you sent to the same FTX group employee, three days after you sent the wire instructions we just looked at.

Agreed?

A Agreed.

Q And in this email, you ask the FTX group employee to let you know when the wire transfer is made for the invoice, correct?

A Correct.

Q And that's because, in your experience, sometimes these transfers get stuck in U.S.-Canadian banking system and don't arrive until you inquire, correct?

A Correct.

Q So you don't dispute that you knew that the transfers from plaintiffs to PLS were going through the U.S. banking system, correct?

A No, I do.

Perhaps, I did not understand it, but I was under the impression that this was coming from a Caribbean bank account and CIBC has Caribbean -- a Caribbean bank called First Caribbean -- "CIBC First Caribbean" is the name of it. So I was under the impression that was the case.

I simply did a cut-and-paste from the information that was given to me by my banker and then the invoice would have been prepared by somebody else.

MS. WHEELER: Mr. Mills can we get his declaration, his supplemental declaration, please?

(Counsel confers)

MS. WHEELER: Do you have it? Do you have his supplemental declaration?

MR. KORNFELD: We do, thank you.

MS. WHEELER: May I approach, Your Honor?

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: Thank you.

BY MS. WHEELER:

Q Exhibit A to your supplemental declaration are the wire instructions from CIBC that you attached.

Do you recall that?

A I don't recall, no.

Q Well, could you look and find Exhibit A. I apologize that it does not have tabs.

A Sure.

Q It would be the first exhibit after your signature page, I presume.

A Okay.

Q Okay. So attached to your supplemental declaration are the wire instructions from CIBC.

Do you recall that?

A I don't recall it. I didn't prepare it.

Q But you signed it?

A I signed it.

Q Okay. And on the second page of the CIBC wire

instructions it says about a third of the way down the page:

"If you are receiving funds in USD currency from the U.S., please use Wells Fargo as an intermediary bank."

Do you see that, sir?

A I do.

Q So if the funds were coming from a Caribbean bank in the Caribbean, these would not be the wire instructions?

A That may be.

Q I'm going to switch gears again and ask you to go back to Tab 2, which is your supplemental, and I'll direct you to paragraph 6. In the third line down from the top, you say:

"The draft presentation on which this allegation is based reflects PLS Canada's existing business and ideas for future business, including its hopes for future expansion into the U.S."

Do you see that?

A I do.

Q And the draft presentation that you're referring to there is the June 21st, 2023, presentation deck that you sent to the debtors' investment bankers, which is attached at Tab 3 of your binder, correct?

A Correct.

Q And if you turn to Tab 3 and look at the June 1st, 2023, email that covers the presentation deck, in your email at the top to the investment bankers, you say:

"I'm attaching a deck here that I hope will be helpful for you to learn more about the company."

Correct?

A Correct.

Q You don't say in your email that the attachment is a draft presentation, correct?

A Well, we discussed it.

Q It doesn't say it in your email that it's a draft?

A It's not in the email.

Q And the presentation itself does not have the word "draft" on it, correct?

A It appears not to. I did not prepare it.

Q And you don't say anywhere in the email that the presentation contains inaccurate information, do you?

A I think we discussed that on the phone with them when we had a subsequent phone call.

Q But your email doesn't say that?

A That's correct.

Q And your email doesn't say that the presentation contains PLS' ideas for future business, does it?

A The email does not.

Q And the email doesn't say that the presentation contains PLS' hopes for future expansion into the U.S., does it?

A It does not.

Q If you flip back to Tab 2, which is your supplemental declaration, please, and refer to paragraph 6 again, the second and third sentences of paragraph 6 state:

"The plaintiffs incorrectly allege that PLS Canada operates 83 clinical trial sites in the U.S., including in collaboration with CVS. It does not."

Do you see that, sir?

A I do.

Q Now, if you'll turn back to Tab 3, which is the June 2023 preparation deck, I'd like you to focus on page 5 of the presentation deck.

A Yes, I'm familiar with that.

Q On the left-hand side of the page where the United States is on the map, the presentation says, "U.S.: 83 sites, plus CVS trial sites."

Do you see that?

A Yes.

It should have said "83 plus CVS sites."

Q Plus, okay. I'll take that.

83 is a very specific number, wouldn't you agree, Mr. Mills?

A I agree.

Q The presentation doesn't say, "83 planned sites," does it?

A No, but I'll be happy to explain it to you.

Q The presentation doesn't say, "PLS hopes to have 83 sites in the U.S. in the future," does it?
A No.
Q If you turn back to Tab 2 of your supplemental declaration and refer to paragraph 6, again, there's a long website that takes up an entire line about halfway down paragraph 6. The sentence after that very long website reads:

"PLS Canada has never had a business affiliation with CVS or the potential experts and access sites in the U.S. identified in the draft presentation."

Do you see that?
A I do.
Q And if you turn back to Tab 3, which is the presentation, and go to page 6, please.
A Okay.
Q The upper right-hand corner, the presentation says, "Experts and site access," correct?
A Uh-huh.
Q And page 6 identifies in turquoise blue, by name, certain universities, U.S. Government agencies, and hospitals in the U.S., doesn't it?
A I'm sorry, I can't read it.
Q I'll read it to you.
University of Virginia. That's in the U.S., right?

A It is.
Q Tufts University is in the U.S.? Boston University is in the U.S.? NIH is in the U.S.? Yes?
A Yep.
Q Okay. UNICEF is in the U.S.? University of Maryland?
I could go on. There are 23 that we list in our brief. So this page lists certain universities, hospitals, and government agencies in the United States, right?
A I do understand where this figure came from.
Q This page doesn't say "potential experts and access sites," does it?
A Well, when you give a presentation to someone, you usually, also narrate what the meaning of the figures are.
Q Okay. This page doesn't say, "future experts and access sites," does it?
A It reflects people we have co-authored articles with.
Q I'd like to turn now to the subject of PLS' incorporation of a Delaware entity.
The Delaware entity was incorporated with exactly the same name as the Canadian entity, right?
A You're telling me.
Q You don't know that?
A I wasn't CEO at the time.
Q You had no involvement in the incorporation of the Delaware entity whatsoever?

A I'm sure it was discussed with me, but I was not a decision-maker.

Q All right. If you turn to Tab 1, your first declaration, and refer to paragraph 7, please, you say in the first sentence:

"PLS Delaware was incorporated for the sole and exclusive purpose of processing payroll, and providing benefits to, the employees of PLS Canada that work remotely from the U.S."

Do you see that?

A I do.

Q And are you aware, Mr. Mills, that in your opposition papers, plaintiffs included an email from a Latona person requesting whether Latona should require PLS incorporate in Delaware?

A I am.

Q Okay. If you then turn to Tab 11 of the binder, this is an email that you sent to Ross Rheingans-Yoo of Latona on April 4th, 2022, four days after the Delaware entity was incorporated on March 31st, 2022, correct?

A Correct.

Q And the subject line of the email you sent reads, "Delaware, Inc."

Correct?

A Correct.

Q And in the email you inform Ross Rheingans-Yoo of Latona that, quote:

"We have now incorporated in Delaware and have all the necessary registrations. Could you advise on how to proceed."

A Correct.

Q If you turn back to Tab 2, which is your supplemental declaration and refer to paragraph 7, please, the second sentence of paragraph 7, you now state in your supplemental declaration that:

"PLS Delaware was formed in March 2022, around the same time as the transactions, at Latona's request."

Do you see that?

A I do.

Q Okay. I want to switch topics again and talk about the David Sackett Award for the Clinical Trial of the Year for the TOGETHER Trial.

A Happily.

Q Okay. If you could -- I think we're still on Tab 2. We are. So if you go to paragraph 18 of your supplemental declaration, the first two sentences, you state:

"The plaintiffs are also incorrect in their assertion that I traveled to the U.S. in May 2022 on behalf of PLS Canada. To clarify, I traveled to the U.S. to receive an award from the Society of Clinical Trials for McMaster

University's work on the TOGETHER Trial."

Do you see that?

A I do.

Q And the award that you're referring to in those sentences is the David Sackett Award for the Clinical Trial of the Year for the TOGETHER Trial, correct?

A Correct.

Q Now, later in paragraph 18, six lines down from the top, you say:

"PLS Canada itself was not part of the initial TOGETHER Trial."

Do you see that?

A I do.

Q Okay. If you turn back to Tab 1, which is your first declaration, and referring to paragraph 5, please, the second sentence of paragraph 5 says:

"In May 2023, PLS Canada was awarded the Clinical Trial of the Year for its accelerated clinical trial work and cost-effective approaches to drug evaluations and efficacy."

Do you see that?

A I do.

Q And if you turn to Tab 12, please, this is a May 24th, 2023, PLS press release entitled, "Purpose Life Sciences celebrates prestigious David Sackett Trial of the Year Award win in 2022, extends congratulations to new awardee.

Do you see that?

A I do.

Q And if you look at the first full paragraph that's not in italics, the first sentence reads:

"Purpose Life Sciences, a global impact research organization, is delighted to announce that it was honored with the esteemed David Sackett Trial of the Year Award in 2022 by the Society for Clinical Trials."

Do you see that?

A I do.

Q In the next paragraph, the first says reads:

"The David Sackett annual Trial of the Year Award was given to Platform Life Sciences in 2022 for its outstanding contributions to the 2021 TOGETHER Trial."

Do you see that?

A I do.

Q And if you go to the top of page 2, Mr. Mills, you're quoted as saying, quote:

"In winning the 2022 David Sackett Trial of the Year Award, we're humbled and grateful to have been chosen from a pool of highly accomplished contenders and we extend our deepest appreciation to the judges and the Society for Clinical Trials for this remarkable honor, said Dr. Ed Mills, founder and CEO of Purpose Life Sciences."

Do you see that?

A I do.

Q And if you go to Tab 4, which is the press release that we looked at earlier, announcing the hiring the Bob Battista, if you look at the very last sentence of the press release, which begins at the bottom of page 2 and carries over to the top of page 3, it reads:

"Platform Life Sciences designed and implemented an innovative, adaptive platform trial called the TOGETHER Trial, receiving global recognition, including the 2021, awarded in 2022, David Sackett Trial of the Year Award by the Society for Clinical Trials."

Do you see that?

A I do.

Q Okay. Last subject, Mr. Mills.

If you go back to Exhibit -- or sorry, Tab 2, your supplemental declaration and go to paragraph 15, please, it starts at the bottom of page 5 and carries over to page 6. I want to go to page 6 and it's five lines down from the top.

There's a sentence that starts, "I have not, to date." Everybody with me? You with me, Mr. Mills?

A Yes.

Q Okay.

"I have not to date been active as a senior scientist with VirX@Stanford, which is a global pandemic response initiative made up of academic from all over the

world. It is not a position at Stanford University in Palo Alto."

Do you see that?

A I do.

Q Okay. So I'd like you to turn to Tab 1, which is your first declaration and refer to paragraph 1 on page 2. Seven lines down from the top, it says -- you state:

"I am also a senior scientist at VirX@Stanford, developing new antiviral agents."

Do you see that?

A I do.

Q And if you go to Tab 3, which is the June 1st deck, and turn to page 35, please, underneath the picture of you on the left-hand side, this second entry says, "Senior scientist, Stanford University."

Do you see that?

A I do.

Q And if you go to Tab 13, this is your LinkedIn profile, Mr. Mills?

A Uh-huh.

Q At the bottom of page 1, under the heading "Experience," the first entry reads:

"Senior scientist, VirX@Stanford, June 2022 through present, Stanford, California, United States."

Do you see that?

A I do.

MS. WHEELER: I have no further questions.

THE COURT: Thank you.

Redirect or anybody else wish to cross, I should ask?

(No verbal response)

THE COURT: Okay. Redirect?

MR. KORNFELD: Thank you, Your Honor.

(Pause)

MR. KORNFELD: Your Honor, we have some exhibits. They may be repetitive, so I'll try to stay with what counsel already used. But in the interests of not interrupting the flow of the redirect, may we distribute them?

THE COURT: Yes.

MR. KORNFELD: They are exhibits that are on our list.

THE COURT: In the event of future hearings, I prefer the exhibits be provided in electronic binders so I can just bring it up on my screen, rather than having piles of documents up here.

MR. KORNFELD: We did that, too.

THE COURT: Okay. Well, if you have it, I can open that up.

MR. KORNFELD: Yeah, they're all exhibits that you have on your electronic screen, Your Honor.

THE COURT: All right. As long as you've got it, I'll take it.

MR. KORNFELD: Okay.

May I proceed?

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. KORNFELD:

Q Counsel called you "Mr. Mills."

Do you have a doctorate degree?

A I do.

Q Can you tell the Court what that degree is?

A It's in clinical epidemiology.

Q From what university?

A From McMaster University.

Q Are you a university professor, Dr. Mills?

A I'm a full professor.

Q Where are you a university professor?

A At McMaster University.

Q Are you affiliated with any other universities?

A I am affiliated with the University of Rwanda and that is the only thing I've signed a contract on.

Q So let's talk about VirX@Stanford.

Are you employed by Stanford University?

A No.

Q So what is your affiliation with VirX@Stanford?

A So VirX@Stanford was an international collaboration of people all working on antiviral agents and it was a way for those collaborators to communicate with one another. It has, unfortunately, not turned into much; although, it sounds like it's an impressive institution, they haven't even had a single meeting yet.

Q Have you done anything for VirX@Stanford?

A No.

Q Has PLS ever been affiliated with VirX@Stanford?

A No.

Q Has PLS ever done a clinical trial for VirX@Stanford?

A No.

Q Has PLS ever entered into any contracts with VirX@Stanford?

A No.

Q Counsel asked you a series of questions about the TOGETHER Trial.

What was your personal involvement in the TOGETHER Trial?

A So my personal involvement was in 2020 at the beginning of the pandemic, I had been involved in multiple clinical trials around the world and at some point, I realized they were all quite deficient in their aim to do outpatient of COVID and so I put together what is called an "adaptive platform trial." It's a very unique type of clinical trial

where you can evaluate multiple interventions at the same time.

This would be unusual for you to see, but you might be familiar with the Oxford University RECOVERY Trial. The reason we know that dexamethasone saves lives, that's a similar kind of trial. And, interestingly, in 2021, they won the Clinical Trial of the Year. We won the 2022 for using a similar design, but we were using outpatient treatment.

Q In 2020 was there a PLS Canada?

A No, there was not.

Q Was there any PLS?

A (Inaudible.)

Q You're shaking your head.

You have to answer out loud.

A No, there was not.

Q You were nice enough to give credit to PLS for the work on the TOGETHER Trial.

Why did you do that?

A Well, midway through the trial, we became PLS because we had multiple funders who were coming forward and we thought that we might be able to engage biotechs also that would put interventions and money into evaluating different interventions for COVID.

THE COURT: Can you pull the microphone -- I'm having a hard time hearing you. I want to make sure we pick

you up on the recording.

THE WITNESS: Sure. I'm sorry about that.

So PLS was incorporated, I think, in 2021 at some point. I had begun the trial at McMaster University, where I hold my academic position. And at some point, we realized that the University didn't want to continue doing the trial because there wasn't much overhead for them. Unfortunately, that's the way that universities work.

And so we were interested in moving as quickly as we could so that we could evaluate multiple interventions in the trial and that was done mostly as a company, as a commercial entity, and that's the reason we established PLS.

BY MR. KORNFELD:

Q Was that TOGETHER Trial done in the United States?

A No, not a single patient was ever recruited there.

Q Where was the TOGETHER Trial done?

A Predominantly in Brazil and Canada and, subsequently, a little bit in South Africa.

Q And as long as we're talking about trials done in the United States, has PLS Canada ever done a single trial in the United States?

A No, we have not.

Q Has PLS Canada ever done any business whatsoever in the United States?

A Yes, we have.

Q What was that business?
A We engaged with two companies to do clinical trials outside of the United States. One was a company called "Eiger," where we had done a clinical trial in Brazil and they gave a small amount of money to finish up that clinical trial. And another one was called "GreenLight Bio," where we were doing a trial for them in Rwanda and, subsequently, that trial never occurred.
Q Other than those two transactions, has PLS ever done a transaction with U.S. companies?
A No.
Q I'm going in reverse order than what counsel did, but it seems to make sense.

Counsel asked you about a Delaware entity, which has also been sued and that's PLS Delaware. What does PLS Delaware do?
A PLS Delaware doesn't do a lot, but it manages the salaries of the eight employees who are U.S.-based and covers somehow paying their health insurance.
Q Does PLS Delaware do anything else?
A It does not.
Q Now, counsel showed you a series of emails where there was a discussion of forming PLS Delaware. It sounded like to do more than that.

What happened?

A Well, I wasn't CEO at the time, but I think that you're referring to the communication with Ross Rheingans-Yoo. We had a communication with him. He was not sure. He represented Latona and the lawyer for Latona happened to be a Canadian and said, No, actually, we'd rather do this deal in British Columbia.

Q And by "this deal," what are you referring to?

A Oh, sorry.

The investment and service contract.

Q And that was the investment and service contract with Latona --

A With Latona and PLS Canada.

Q Was that the investment and service contract, just to put a pin in it, that was funded you discovered, by FTX Trading and Alameda Trading?

A I believe so.

Q So you remember counsel's sort of longer series of questions about what has been marked as Exhibit 3, which is the draft presentation that you sent to Mr. Saferstein at Perella Weinberg.

Can you describe the circumstances that led you to send that draft presentation to Mr. Saferstein?

A Certainly.

I received an email from Mr. Saferstein indicating he wanted to talk about the company. That they were with

Perella -- some company I was unfamiliar with -- and he requested a discussion. The CEO, at the time, advised that I send the slide deck to him.

The slide deck is an aspirational slide deck that, you know, any company utilizes to see, you know, potentially, what our narrative is on what the future of the company looks like.

Q So counsel asked you questions about the slide deck not having the word "draft" on it and you wanted to explain why it didn't have the word "draft" on it and you weren't given that opportunity.

Would you explain to the judge now why Exhibit 3, the draft presentation, doesn't have the word "draft" on it and the conversations that you had with Perella Weinberg regarding that exhibit.

A Certainly.

Well, you know, every company keeps some sort of slide deck about what their aspirations are. Some of it has been -- you know, some of it is how we currently are and some of it is how we'd like to project ourselves. But that slide deck was never for public consumption. And when we discussed it with them, we also discussed that this was without prejudice.

Q You said it was never for public consumption.

Did that slide deck go to anybody, other than the

investment bankers at Perella Weinberg?

A Not to my knowledge.

Q The slide deck talks about 83 clinical trial sites in the United States.

Were there 83 clinical trial sites in the United States?

A No, we do not have 83 -- we don't have any clinical trial sites.

Q Was there ever PLS' history, a single trial site in the United States?

A No.

Q When you were talking to Mr. Saferstein, did you explain to him that this is an aspirational slide deck, that we really don't have a single site in the United States?

A Well, it was a very strange phone call, because we had several people from his team, but they were all calling in from, I think, Grand Central Station or somewhere on their way home, so it wasn't a highly organized phone call.

Q It could have been from Delaware. Who knows?

A Right.

Q And you said it wasn't a highly organized call.

Was it only one call about that presentation?

A Only one call.

Q Was that ever -- did that presentation ever become, in any way, a reality?

A Some elements of that are a reality.

Within a very short period of time, the 83 sites that that's referring to, which is, that's CVS -- CVS decided -- CVS is open, just as anybody here is welcome to approach -- at the time, was welcome to approach CVS and ask about access to 83 clinical trial sites. They subsequently closed it very shortly after that. They said there's no component of their company that could currently run the trials.

Q So they never had one of your trial sites, if I understood you?

A That's correct.

Q And they never ended up doing trial sites?

A No.

Q Counsel asked you questions about all of the academics that are referenced in that draft presentation; all of the academics, of course, being American academics, as she read them to you.

Do you recall that testimony?

A Yes.

Q What were you referring to on that page of the draft deck?

A So in our industry, in clinical medicine and clinical research, your expertise and, in particular, publications have value. They demonstrate that you can complete a project.

So I've been fortunate enough to work with some of the leading academics in the world and that particular figure reflects a network of all the core scientists within our team and people that they have collaborated with. So it illustrates the network of academics that we would have access to.

Q But you didn't enter into contracts with those academics, did you?

A No.

Q You said in your world of clinical trials, your world of science and attempting to bring cures to disease, publishing in journals is important.

Why is that?

A So there -- it's a very important component of advancing intellectual knowledge and access to scientific information. So it would be considered unethical to not publish if you've done original research.

Q Why would that be unethical?

A We do research to save lives. We do research to benefit the lives of those who are more misfortunate. And covering up findings, which, of course, happens within the commercial industry, does happen.

Within the environment and collaborators that I have, that would not be permissible.

Q How many times have you personally published in

recognized scientific and medical journals?
A I don't keep an exact track of it, but I'm one of the most published scientists in Canada, so at least 550 publications.
Q Has PLS as a company ever published an article in any journal, whether it be an American journal or any other journal?
A Not for the purpose of PLS Canada, no.
Q What do you mean by that?
A I mean that, as I mentioned, credibility and demonstrating non-bias and, you know, being entirely transparent is important. So you will always -- you know, these are individuals who publish. You know, just because you're from a company, do you get the right to publish. Individuals must contribute in a meaningful way and then they must disclose any conflicts that they might have, such as taking a salary from a company like PLS.
Q Have you published during your academic career in American journals?
A Of course.
Q Have you published in British journals?
A Yes.
Q Have you published in journals that are published throughout the world?
A Of course, yeah.

Q Did you list some of those in your supplemental declaration for the Court to review?

A I did.

Q Counsel asked you about the Wells Fargo correspondent account that CIBC uses for its dollar transfers. Let me ask you a couple of questions about that.

Is that a special account that Wells Fargo only uses for PLS?

A I don't know. I have no familiarity with it.

Q And did PLS tell Wells Fargo that -- I'm sorry, did PLS tell CIBC that CIBC had to use Wells Fargo as a conduit in order to receive the dollar transfers from FTX and Alameda?

A No, it did not.

Q Did PLS have any control of how CIBC receives dollar transfers from anybody?

A No, we have no control.

Q And when you gave wire instructions to Mr. Rheingans-Yoo on behalf of Latona, did you simply cut and paste the wire-transfer instructions for the CIBC website and then forward those to Mr. Rheingans-Yoo?

A Something like that, yeah.

Q Does PLS have an account at an American bank?

A It does.

Q What is that account?

A Chase Bank.

Q And what is that account used for?
A Oh, I'm sorry, did you say PLS --
Q Well, okay. So let's -- I confused you, so I apologize.
Does PLS Delaware have an account at an American bank?
A Yes, it does.
Q What is that account used for?
A For transfer of payments of salaries and benefits --
Q Is --
A -- to employees.
Q To the PLS Canada employees that are in the U.S.?
A That's correct.
Q Does PLS Delaware use that Chase account for anything else, other than to pay employees?
A No.
Q Does PLS Canada have an account at an American bank?
A No.
Q You were asked a lot of questions about the team and the evolution of the leadership team at various times at the company. Let's -- we're going to get to that in one minute, but let's first focus on PLS as an entity, not the individuals that work for it.
PLS, as an entity, ever done anything in America?
A Yes.
Q What has it done?

A PLS, as an entity, picked up the award for Clinical Trial of the Year, where I attended and some staff attended conferences.
Q Other than that?
A No.
Q In terms of Mr. Battista, Ms. Davis, Ms. Winter, people who, at various times, were listed as being part of your leadership, did they try to develop business in the United States?
A I'm sure that they did, so yes.
Q Did they ever obtain any business in the United States?
A With the exception of -- no, those individuals. No, they never did.
Q And you were going to say with the exception -- you previously testified there were two funding transactions over PLS' history that were used to fund trials that were done in Brazil, if I recall?
A Brazil and Rwanda, Eiger and GreenLight.
Q So what do these American remote employees do for PLS Canada?
A At the moment, they predominantly help with building education for an initiative we are leading through Africa, and so their entire focus is on Africa.
Q Does PLS have employees in places other than Canada and the United States?

A Yes.
Q Where are those employees?
A In Rwanda, Nigeria, Kenya, South Africa.
Q Approximately how many PLS employees work in Africa?
A Approximately 20.
Q Approximately how many employees does PLS have?
A Approximately 59.
Q Was Mr. Battista and Ms. Davis and Ms. Winter ever C-suite leaders for PLS?
A No.
Q Who were the C-suite leaders over time?
A Over time, it arguably has been Dr. Jamie Forrest; currently, Mr. Chris Clarke; previously, Melissa Bomben; Michael Zimmerman; and myself.
Q How long did Ms. Bomben work for PLS Canada?
A Approximately three months.
Q Why so short?
A I believe she was taking the company in the wrong direction.
Q Have any of those American employees of PLS ever done an American clinical trial for PLS?
A No.

MR. KORNFELD: Your Honor, may I have a moment?

THE COURT: Sure.

(Pause)

MR. KORNFELD: Thank you, Your Honor.

No further questions at this time.

THE COURT: Okay. Thank you.

I have a couple questions, Dr. Mills.

When you conduct clinical trials outside the United States, do you use U.S. Food and Drug Administration rules and regulations to conduct those trials?

THE WITNESS: Thank you, Your Honor. I love that question.

There are international standards and the U.S. FDA is one of about eight different countries that have agreed to share in those standards. And for the trials in Brazil, for example, they have their own FDA that you must pass the regulations for.

In order to meet the FDA regulations, quality of clinical care, it will be dependent on whether or not you're trying a new drug for the purpose of registration of a new drug or you can also do repurposing of drugs, which, just imagine, you're using aspirin, for example, for some condition. If aspirin is already been available in that particular country, then you don't need to get the equivalent of FDA approval.

In Africa, they've just begun the African Medicines Agency, which will be the FDA equivalent for Africa.

THE COURT: And the U.S. Delaware entity, you say that they pay the salaries of employees and the health insurance.

Do they also pay the payroll taxes for those employees?

THE WITNESS: Yes.

THE COURT: And how does -- in your declaration, you indicate that PLS Delaware has no operations, no income, it doesn't produce anything. It has no employees.

So where does the money come from to pay those employees?

THE WITNESS: It gets transferred from PLS Canada.

THE COURT: So it goes from a Canadian bank to the U.S. bank?

THE WITNESS: That's correct.

THE COURT: Okay. Thank you.

I will -- I asked some questions, so I'll open it up to the parties if they want to follow up on that.

MS. WHEELER: Nothing further from (inaudible).

MR. KORNFELD: Nothing further, Your Honor.

THE COURT: Okay. Thank you.

Thank you, Dr. Mills. You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. KORNFELD: Your Honor, PLS Canada rests.

THE COURT: Okay. Thank you.

MS. WHEELER: Your Honor, given the very late hour, I want to make a couple very quick legal points. First, because there's been no jurisdictional discovery, plaintiffs need only make a *prima facie* showing of personal jurisdiction over PLS based on competent evidence and we believe we've done that with the 66 exhibits attached to Mr. McGuire's declaration.

Second, in deciding the motion to dismiss for personal jurisdiction, the Court considers PLS' contacts at the time the complaint is filed or within a short period of time before that. And this point wasn't briefed, Your Honor, so I can give you authorities on that.

THE COURT: Well, I think we're getting into argument and it's their motion, so --

MS. WHEELER: Oh, sorry.

I thought he rested, meaning he wasn't going to argue the motion.

THE COURT: No further evidence, I think, is what he was saying.

MR. KORNFELD: No, I -- no further evidence.

MS. WHEELER: Oh, I apologize. I apologize. I was getting ahead of myself. Sorry.

THE COURT: Do you have any evidence?

MS. WHEELER: No.

THE COURT: Okay. So --

MS. WHEELER: Just, Your Honor, we've already, I guess, moved in the declaration of McGuire?

MR. KORNFELD: No, I don't think you did, actually.

MS. WHEELER: Well, I thought you did for me, but I'm happy to do it if you don't think you --

THE COURT: Why don't we --

MR. KORNFELD: I indicated there were no objections.

THE COURT: Why don't we do it just to make sure?

MS. WHEELER: Yeah, all right. Fair enough.

All right. Your Honor, I'd like to move into evidence the attorney declaration of Matthew McGuire, which is Docket Entry 42 and the 66 exhibits attached thereto and the notice of filing of a corrected exhibit to the declaration of Matthew McGuire, which is Docket Entry 47, and that attaches a corrected Exhibit 3, that June 2023 deck.

THE COURT: Okay.

MR. KORNFELD: And as I said, Your Honor, no objections.

THE COURT: All right. Those are all admitted, without objection.

(McGuire Declaration and attached exhibits received in evidence)

MS. WHEELER: Thank you, Your Honor.

MR. KORNFELD: Your Honor, may we argue?

THE COURT: Yes, go ahead.

And, by the way, we can stay -- hopefully, it won't take past 5:30, but we do have some extra time if we need to go past.

MR. KORNFELD: Yeah, and we -- I understand that and I just want to alert the Court, we have the need for probably about 10 minutes on Number 14.

THE COURT: Yes.

MR. KORNFELD: It's not going to be long and there's not going to be evidence.

Your Honor, here's where we are on jurisdiction. It's a story of a transaction or transactions between companies on the one hand that are from islands. Latona is Barbados. Alameda is British Virgin Islands. FTX is Antigua and Barbuda and PLS Canada.

There's no dispute that the transactions at issue here did not touch the United States. The transactions weren't for the purpose of touching the United States; they were for the purpose of clinical trials that would be conducted in developing and underrepresented countries that need clinical trials in order to fight disease in those countries. The transactions weren't for the purpose of raising money in the United States, conducting trials in the

United States, doing business in the United States.

We've extensively briefed, and the plaintiffs have extensively briefed the cases in this area, and there's a commonality to the cases when dealing with specific jurisdiction. And the commonality is where the transaction has something to do with the jurisdiction or touches the people in the jurisdiction, like, when money is raised in the jurisdiction, when securities offerings are made in the jurisdiction.

In the case of the Dorsey case versus -- about the management of tennis clubs and golf clubs, there was jurisdiction in that case because the California Corporation went to Michigan and opened tennis clubs and golf clubs and used its employees to run those clubs and manage those clubs. So not only were the transactions in the forum, but the employees were in the forum. The business was in the forum. And, in essence, the California Corporation had done what the cases talked about; they had purposely availed themselves of the forum.

That is not what has happened here. There has been no purposeful availment of the United States. This entity has not done the transactions at issue in the United States.

Now, has its employees touched the United States? Yes. They went there and they got an award because they get

a great trial. They published in an American journal, the New England Journal of Medicine, a great honor, in and of itself. They published in The Lancet, a British journal, and they published in African journals and journals throughout the world.

But that doesn't mean PLS purposely availed itself of the United States. It doesn't mean that PLS consented to jurisdiction.

PLS scientists go to conferences in the United States. They go to conferences all over the world. When you're writing clinical trials and you're trying to cure disease, you've got to stay current. If a conference is in the United States, you're going to go to the United States.

Does that mean that you've consented to jurisdiction on behalf of the entity that you work for? Absolutely not. Not a single case says that.

Let me turn to the banking issues because there was a lot of briefing and a significant amount of cross-examination on the banking issues. We thought, as the exhibits to Dr. Mills' original declaration shows, we thought based on wire confirmation, that the money came from Tortola, that the money came from the British Virgin Islands. That's what the wire confirmation said.

Plaintiffs were kind enough to tell us the money actually came from an American bank account. Let's first

stop right there and talk about the money coming from an American bank account. We cited the Gargano v Cayman National Corporation case. It's a district court case from New York, almost on all fours as this case. It was an argument made that there was jurisdiction in the United States because the money came by wire transfer from an American bank account.

And the money came from an American bank account to the Cayman bank. And the Court there said the fact that the money came by wire from an American bank down to the Cayman National Bank doesn't create jurisdiction. The payor could have walked into the Cayman bank and deposited a check there.

So the fact that the money came from the American account, that wasn't intentionally directed. The recipient of the money didn't say, Make sure you send it from your American bank account. It could have come from the Cayman bank account in cash. So the Court said there:

"Defendants receipt of the funds by means of a wire transfer that originated in the United States is fortuitous contact between defendants and the United States, which cannot constitute a basis not exercise of personal jurisdiction."

Like here, the fact that the money came from an American bank account instead of an island bank account is a

fortuitous contact. It was not a contact that we had any control over.

And even if the funds were routed, as we found out, that they were routed through Wells Fargo because CIBC uses that in every receipt of dollars by wire, PLS Canada had no control over that process. That's the bank's process. The bank uses a correspondent bank. Apparently, the use of correspondent banks is something we all learned is used frequently, so that doesn't equal consent to jurisdiction.

Canadian Group Underwriters Company v M/V Arctic Trader, a 1998 U.S. District Court case, said when you use a New York bank, in that case, only as a conduit for defendants' account with a London bank, that does not create jurisdiction because, the Court reasoned, defendants do not maintain an account in New York and they had no part in selecting the New York bank, another New York bank as a correspondent bank, as an intermediary.

In this situation, PLS Canada does not maintain a New York account. It has no part in selecting Wells Fargo as an intermediary correspondent bank. It is analogous facts to Canadian Group Underwriting Company v M/V Arctic Trader [sic]. There was no jurisdiction there. There's no jurisdiction here, based on the use of the correspondent bank.

Wire instructions. Wire instructions are what we

all knew was done in this case. When you send wire instructions, you take a screenshot or you cut and paste so you get the wire instructions right and you send them to the entity that's going to wire you. And that was exactly what was done here. Cutting and pasting wire instructions does not mean that PLS had a hand in controlling the process by which funds flowed into its Canadian bank account.

The cases the plaintiffs cite, without exception, are cases where foreign banks, who are sued in the U.S., fought jurisdiction, basically saying, we're a foreign bank; we shouldn't be subject to jurisdiction in the United States. In every one of those cases, there was jurisdiction. I'm talking about Arcapita, which is a case dealing with jurisdiction over the Bahrain Islamic Bank, and I'm talking about Licci v Lebanese Canadian Bank, and SIPC v Madoff.

In each of those cases, by contrast to our case, the foreign banks told the wireor [sic], the payor, we have an American bank account. Use the American bank account to get us money. Wire the money in to the American bank account.

They control the process. They told the payor how to wire. The payor was told to use the U.S. banking system and that's distinguishable.

The classic case that shows how distinguishable these cases are is the Licci v Lebanese Canadian Bank, which

is a Second Circuit case from 2013, where personal jurisdiction was found over defendant Lebanese Canadian Bank. In that case, what was the bank doing? The bank was actually gathering money and wiring it to Hezbollah.

The bank had been sued by Israeli survivors of terrorist attacks. The bank made a 12(b)(2) motion and said, We're not here. We're in Canada. We're in Lebanon. We shouldn't be hailed into an American court. And the Court said, look, you're alleged to have violated American banking laws by funneling money to terrorists. You used American bank accounts. You used dollars. You used your correspondent accounts to wire money to terrorists. That's the allegation. There is jurisdiction.

That's not what we have here. We don't have a case, in the Madoff series of cases, where there was jurisdiction over the foreign bank because the foreign bank, again, directed that its correspondent account be used to put dollars in that were obtained from Madoff investors.

None of those bank accounts are on point. PLS Canada neither chose to use a U.S. bank or received funds in a U.S. bank. There is no personal jurisdiction.

PLS Canada doesn't have a continuous or systematic contact. There is no general jurisdiction. PLS Canada doesn't do anything in the United States from a business standpoint. It doesn't do its business, which is running

clinical trials. It runs clinical trials in the countries that Dr. Mills talked about: Brazil, Pakistan, Rwanda, South Africa. It is running trials all over Africa and underrepresented and/or underdeveloped countries.

It is doing that good work, but it is not doing that good work in the United States. Yes, it has employees. Yes, it goes to conferences. Yes, it has a presentation where a scientist who was based in the United States is listed as a leader. Yes, it has a chairman, an executive chairman on the board who is a very, very distinguished medical doctor on the Georgetown staff. But it doesn't have a business in the United States. The transaction didn't have anything to do with the United States.

And the cases that are cited by the plaintiffs, with respect to the remote employees, just -- it's like -- I mentioned the Dorsey v American Golf Corp. case. Another case that sort of epitomizes what is not going on here is Functional Pathways of Tennessee v Wilson Senior Care, a district court case from Tennessee from 2012. A South Carolina corporation goes to Tennessee. That South Carolina corporation happens to provide therapy to seniors in convalescent hospitals.

South Carolina corporation says, We're a South Carolina corporation. There's no jurisdiction over us in Tennessee. And the Court says, Well, your employees worked

in Tennessee. Your employees were resident in Tennessee. Your contract was signed in Tennessee and you profited from a lot of work in Tennessee. There is jurisdiction.

We don't have that. We haven't profited from the United States. We haven't worked in the United States. We're not working in the United States. As close as we got to the United States and work was an aspirational deck that was sent to an investment banker and was the subject of one conversation; that, jurisdiction, does not make.

I would submit, Your Honor, unless you have any questions, there is no general or specific jurisdiction here.

THE COURT: Okay. Thank you.

No questions for now.

Ms. Wheeler?

MS. WHEELER: I'll try it again this time, Your Honor.

THE COURT: All right.

MS. WHEELER: So I wanted to begin with three very simple principles of law that I think require denial of this motion. The first one, Your Honor, is that whereas here, there's been no jurisdictional discovery, the plaintiffs need only make out a *prima facie* case of personal jurisdiction over PLS and we think we've done that. I'll get into that in a second.

Second, in deciding a motion to dismiss for lack

of personal jurisdiction, the Court considers PLS' contacts at the time the complaint is filed or a short period of time before that and that wasn't briefed. I can give Your Honor the points on that. It's Klinghoffer v S.N.C. Achille Lauro in the Second Circuit, 937 F.2d 44, 52 (2d Cir. 1991) and MacQueen, M-a-c-Q-u-e-e-n v Union Carbide Corp., 2014 WL 6809811, at. *6 (D. Del. Dec. 3, 2014).

And the reason that point has become relevant, Your Honor, is because as we saw in Mr. Mills' cross-examination, you know, PLS has changed its website after the complaint was filed in a transparent attempt to claim that its leadership team was based in Canada and not in the U.S., so any eleventh-hour shenanigans by PLS to try to defeat jurisdiction are (indiscernible) irrelevant on this motion.

And, third, because there hasn't been an evidentiary hearing on PLS' motion and, in fact, no discovery or any other things, the plaintiffs are entitled to have all of their allegations taken as true and any conflicting facts must be resolved in plaintiffs' favor on this motion. And PLS concedes as much at paragraph 20 of its moving brief, where it cites Pinker v Roche Holdings in the Third Circuit.

And the law is clear that where plaintiffs have sustained their burden of producing competent evidence showing jurisdiction is proper, the 12(b)(2) motion must be denied, despite any controverting presentation by the

defendant, and that's Godo Kaisha IP Bridge, 2016 WL 4413140.

Now, we talked about this earlier, but in support of its motion, PLS submitted two declarations of Edward Mills and as we hope we demonstrated on cross, those declarations not only contradict each other, but they contain demonstrable misstatements, so they don't constitute credible evidence that the Court should consider on this motion.

Mr. Mills is not credible on the big points, who the leadership team was and where they were located, and he's not credible on the small points, whether he is a senior scientist at Stanford and whether his company won the PLS -- sorry -- the David Sackett Award. It seems like Mr. Mills will say whatever is convenient to whatever audience he's speaking to at the time.

But even if the Court were to consider the Mills declaration, to the extent there are factual discrepancies between the evidence plaintiffs have submitted and what Mr. Mills said in his declaration, the Court has to resolve all factual disputes in plaintiffs' favor in deciding this motion.

Because Mr. Kornfeld spent a lot of time on wire transfers, I'll start there. We've cited cases at pages 22 to 23 of our opposition brief that hold that a defendant's use of a correspondent bank account in the U.S. subjects that foreign defendant to specific jurisdiction in the U.S.,

because the foreign defendant purposely availed itself of the U.S. banking system.

PLS doesn't dispute that for each of the three transfers, and they totaled $53 million, Your Honor, plaintiffs sent wire instructions ordering the plaintiffs to send the funds through a correspondent bank. The sending of those wiring instructions, directing that the funds go through a U.S. correspondent bank is an intentional act that constitutes purposeful availment of the U.S. banking system.

Mills was aware that he was using the banking system, as that email we showed -- it's McGuire Exhibit 65 -- where he tells an FTX employee, Let me know when the wire goes through, because sometimes they get stuck in the U.S.-Canadian banking system and they don't arrive until we inquire.

You know, despite sending those wire instructions, PLS contends that it had no hand in directing the process and no control over CIBC's use of Wells Fargo as a correspondent bank. PLS did have choices that would have avoided U.S. jurisdiction; they just didn't utilize them.

So, for example, if PLS had wanted to avoid specific jurisdiction in the U.S., it could have chosen to receive the funds in Canadian dollars, it is a Canadian corporation, after all; Bahamian dollars -- Latona was a Bahamian company that was entering into these agreements with

it; or any other non-U.S. currency. But they chose U.S. dollars.

Had they chosen not-U.S. dollar currency, it wouldn't have gone through Wells Fargo. We looked at the wire instructions. Those are wire instructions for U.S. dollars originating from the U.S.

Alternatively, PLS could have avoided specific jurisdiction by receiving the funds in a non-U.S. currency and then utilizing banks outside of the U.S. to convert the funds to U.S. dollars using foreign-exchange transactions. Those transactions wouldn't have utilized a U.S. correspondent bank, but those options wouldn't have allowed PLS -- I'm sorry -- but the options that would have allowed PLS to avoid the U.S. banking system take longer and they involve transaction costs and, therefore, make the transactions more expensive.

So PLS did the fastest and least-expensive thing; it affirmatively directed plaintiffs to transfer the U.S. dollars through Wells Fargo as the U.S. correspondent bank and, thereby, purposely availed itself of the U.S. banking system.

PLS tries to distinguish the cases that we cited on the grounds that the defendants in those cases were foreign banks, not foreign corporations. But the reasoning in those cases applies, whether defendant is a bank or a

corporation. The reasoning of those cases is that it is the purposeful or intentional use of a U.S. correspondent bank that subjects a foreign defendant to personal jurisdiction, not the status of the defendant.

The cases that PLS cites, and Mr. Kornfeld spoke about, Gargano and Canadian Group Underwriters Insurance Company are readily distinguishable. In those cases, there is no evidence that the defendants directed the wire transfers through a U.S. correspondent bank. There wasn't even a U.S. correspondent bank in Gargano.

In Gargano, the Court noted that for defendants' purposes, it did not matter where the money came from or how it got to them.

But here, it mattered to PLS how the money got to them. They sent wire instructions, directing that the U.S. dollars go through the U.S. correspondent bank at Wells Fargo. PLS cites Gargano for the proposition that the receipt of a wire transfer is an inherently passive action that is a fortuitous contact between the defendant and the United States that can't establish specific jurisdiction.

But unlike the defendants in Gargano, PLS' actions were not inherently passive; PLS affirmatively directed plaintiffs to wire the U.S. dollars through Wells Fargo.

Similarly, in Canadian Group Underwriters, there was no evidence defendants directed plaintiff to use UniBank

in New York as the correspondent bank. The Court said the defendant has no part in selecting the New York bank as the intermediary.

Here, by affirmatively sending the wire instructions, directing plaintiffs to send the funds through the Wells Fargo, as correspondent bank, PLS purposely availed itself of the United States banking system.

But we don't just have the wires. We also have PLS affirmatively invoking the protections of the U.S. securities and tax laws in the SAFE and we have PLS agreeing to New York arbitration provisions and New York choice of law in the services agreement. So, you know, if you agree to arbitrate in New York and you agree to New York law, you should at least foresee the possibility of litigation in the United States.

And they also used New York lawyers to negotiate these agreements. And, you know, plaintiffs make the point that it's not exclusively New York lawyers, but it's exclusively U.S. connections that matter to this motion and nobody disputes that they used U.S. lawyers.

We talked about the Delaware entity. Whatever the reason it was created, there's now no dispute that it was created in connection with this transaction at Latona's intent, and so that's another, you know, the creation of a Delaware entity in connection with this transaction is

purposeful availment.

Turning to general jurisdiction. There are an awful lot of contacts that PLS doesn't dispute and it's the totality of the circumstances that matters for general jurisdiction. So just to go down the list quickly, PLS doesn't dispute that 43 percent of its employees reside and work in the U.S. That's a really large percent, Your Honor, 43 percent. PLS doesn't dispute that it actively solicits employees to work in the U.S. And it's not, as Dr. Mills contends in his reply declaration, that some employees just happen to work in the U.S.

If you look at Exhibit 36 to the McGuire declaration, it's a PLS job posting for a senior director of business development in Boston, Massachusetts. Not anywhere in the U.S. -- Boston, Massachusetts. You must live in Boston, Massachusetts, to do this job for PLS. That's not just some employees happen to work in the U.S.

PLS doesn't dispute that it's employees regularly publish articles in U.S. medical journals, that they publish articles with other U.S. academics and doctors, and that PLS posts those journal articles on its website.

PLS doesn't dispute that its employees regularly attend conferences in the U.S. and that those employees have one-on-one business meetings with conference attendees in the U.S. at those conferences. And those are McGuire Exhibits

40, 41, and 43. Each of the attendees says, you know, please contact us to arrange a one-on-one meeting with us at the conference.

What do you think they're doing at those meetings? They're soliciting business on behalf of PLS in the U.S. PLS doesn't dispute it, partner with GreenLight and Eiger, which are U.S. companies, for clinical trials outside of the U.S. It doesn't dispute that the TOGETHER Trial received funding from U.S. investors. And it doesn't dispute that Ed Mills traveled to the U.S. to accept the award for the Clinical Trial of the Year.

There are really only four facts that plaintiffs had presented that PLS disputes and we've covered each of those on cross, Your Honor. The first one is that five of the six members of the leadership team at the time the complaint was filed were in the U.S., and so they were directing PLS' activities from the U.S. we talked about the 83 clinical sites and 23 experts that it told the debtors' investment bankers it had in the U.S. You can't tell the bankers you have these and then deny them when it's inconvenient for your personal jurisdiction motion. You know, the dispute about whether PLS won the David Sackett Award. Whether it did or it didn't, that's what PLS is out touting to the world in its press release, including quotes from Mr. Mills. And, finally, whether Mr. Mills is a senior

scientist at Stanford; again, he's touting it on his LinkedIn and in his deck to the debtors.

I don't want to belabor any of those other things. I would say in closing, you know, Mr. Kornfeld sort of opened by saying that this is a case about an Antiguan company and a British Virgin Islands company and a Bahamian company and a Canadian company. That's not what this case is.

We filed a complaint against six life sciences companies. Five of them are in the U.S.: Sam Bankman-Fried, a U.S. citizen; Ross Rheingans-Yoo, a U.S. citizen; Nick Beckstead, a U.S. citizen; FTX Foundation, a Delaware nonprofit; and PLS.

This is a case that should be heard in this bankruptcy court in the U.S. The Court and the debtors have an interest in litigating this adversary proceeding here and having the fraudulent transfers adjudicated in the United States.

Thank you, Your Honor.

THE COURT: Thank you.

MR. KORNFELD: A short response, Your Honor?

THE COURT: Certainly.

MR. KORNFELD: Your Honor, the SAFE is Exhibit 5. That's the transaction document for the $35 million transfer. Counsel left out what the safe says about jurisdiction and choice of law which is on page 7 of the SAFE at Section 7(f).

That reads:

"The parties agree that this SAFE and all the rights and obligations hereunder shall be governed by the laws of the province of British Columbia and the federal laws of Canada applicable therein. Each party hereby submits to the exclusive jurisdiction of the courts of Vancouver and British Columbia."

Counsel left that out. Counsel also left out the provisions of the services agreement, which is Exhibit 8 of our exhibit list that talked about Canadian securities laws, that talk about Canadian jurisdiction. That was left out, too.

Counsel talks about what we don't dispute. Plaintiffs don't dispute this is a case about a business who doesn't have any business activity in the U.S. Counsel doesn't focus on the big picture here, which is however counsel tries to minimize it, this is transactions between companies that don't have anything to do with the U.S.

Yes, the FTX bankruptcy case has a lot to do with the U.S. Samuel Bankman-Fried, *et al.*, have a lot to do with the U.S.

We're talking about what PLS Canada has to do with the U.S. and PLS Canada doesn't have very much to do with the U.S. It doesn't do its trials here. It doesn't operate here. Yes, it has some employees. Yes, it gets some awards.

Yes, it talks to academics. Not to talk to academics throughout the world when you're trying to cure disease would be scientific malpractice.

Now, a couple of points from counsel's argument struck me, in particular, the point about foreign currency which is a point that nobody briefed. Nobody said that if you're a Canadian entity who gets money in dollars, you purposely availed yourself of the United States' jurisdiction, until counsel argued.

So if counsel's argument is taken to its conclusion, and it's not an absurd stretch, every dollar transfer to a Canadian bank account would constitute purposeful availment of the United States' jurisdiction. You would then be subject, as a Canadian who received a wire transfer denominated in dollars, to jurisdiction of American courts; again, not a logical stretch to take a Japanese citizen who received a dollar transfer, you would then be subject to the jurisdiction of American courts.

Receiving dollar transfers in a Canadian bank account does not, under any stretch of the imagination, or in any case, ever constitute consent to jurisdiction.

The Delaware entity in this case was not used. The Delaware entity, it was contemplated, as we see from the emails, as Dr. Mills candidly testified, the Delaware entity was an entity that was formed that could have been used. It

was not used. Nobody has made any allegations against the Delaware entity; in fact, as we will see when we get to Number 14, the plaintiff is saying, now, that it does not have any claims against the Delaware entity. The Delaware entity doesn't run trials and, most importantly, wasn't a part of the transactions at issue. The Delaware entity did not receive any of the transfers that form the basis of the alleged fraudulent transfers.

So, you can say that because PLS Canada has touched, and continues to touch the United States in various shapes and forms, it has purposely availed itself of United States law and there is jurisdiction, but if you say that, you're making an argument that is contrary to every argument in every case about jurisdiction. There's no case that says if you touch the forum, whether it be, in this case, the United States, or whether it be in many of the cases we almost cited cases where the resident of one state is fighting jurisdiction in another state.

Touching a forum doesn't get jurisdiction. Continuous and systematic contact with the jurisdiction gets you general jurisdiction. That's the law.

What is continuous and systematic contact? The epitome of it is your headquarters are in the jurisdiction or you're incorporated in the jurisdiction. You're at home, as the cases say, in the jurisdiction. That's general

jurisdiction.

PLS Canada is not incorporated in the United States; it's incorporated in Canada. PLS Canada is not headquartered in the United States; it's headquartered in Canada. PLS is not at home in the United States; it's at home in Canada.

PLS received the transfers at issue in Canada. It does its business throughout the world, but not in the United States. There is no jurisdiction, whether it's general jurisdiction or specific jurisdiction.

The fact that PLS cut and pasted wire instructions does not constitute jurisdiction because, again, not a stretch, CIBC still uses Wells Fargo as a correspondent bank for dollar transfers. Are we to say to every CIBC account holder who receives a transfer in American dollars that that account holder has consented to jurisdiction in the United States?

We can't say that without being accused of having no legal basis whatsoever to support that. There is no legal basis to support that. There is no legal basis for jurisdiction.

Thank you, Your Honor.

THE COURT: All right. I'm going to take the matter under advisement and I'll issue a ruling in due course.

Let's move on to Item 14 and I've read the papers on this, so let's not take a whole lot of time on it.

MR. KORNFELD: Okay. I'm going to do it in under 5 minutes, Your Honor.

THE COURT: All right.

MR. KORNFELD: So our position is that PLS Delaware didn't do anything in connection with any of the transactions. PLS Delaware is sued in the complaint; they're named in paragraph 21 of the complaint.

THE COURT: They said they're not pursuing you in Delaware.

MR. KORNFELD: They're not pursuing it, and so we have a difference of opinion only about one thing. The difference of opinion is what should you do when you hear, as they wrote in their papers, that they're not pursuing PLS Delaware.

PLS Delaware's position is you should grant the motion to dismiss under 12(b)(6) without leave to amend. The plaintiffs' position is we've said we're not pursuing Delaware and that's good enough, therefore, this is all moot. We'll take out any reference to pursuing Delaware from the complaint.

Here's my problem with that, Your Honor. They could decide tomorrow or in six months to make a motion to amend to say they are pursuing Delaware. There's no basis

for that, in my view, but there's no stopping them from doing that unless you issue a decision that they have failed to state a claim against Delaware and they can't amend to state that claim.

That's why I'm asking you to grant the motion without leave to amend.

THE COURT: All right. Any response?

MS. WHEELER: Your Honor, we never sued PLS Delaware, so there's no motion to dismiss, with respect to PLS Delaware, so the motion to dismiss should be denied as moot. You can't dismiss someone without prejudice when there's been no briefing, no discovery. If we find six months from now, some basis to sue PLS Delaware, we'll sue PLS Delaware.

What he's asking for at this very early stage of the case seems unnecessary.

MR. KORNFELD: Your Honor, in paragraph 21 of the complaint, let me read it to you:

"PLS is a company incorporated in British Columbia, Canada, in February of 2021 and in Delaware in March of 2022, that supports clinical trials, including anti-therapeutics research."

We read that to say they sued both of the entities.

THE COURT: Who's in the caption?

MR. KORNFELD: In the caption, it's Platform Life Sciences, Inc. That's it.

THE COURT: All right. Well, I'm not going to grant the motion to dismiss with prejudice, because as Ms. Wheeler pointed out, six months from now, they might find some additional information that gives them the basis to sue you.

But I do think the debtors need to file an amended complaint to make it clear that you're not pursuing PLS Delaware in this complaint.

So I will -- you know, it's kind of a "chicken and the egg" kind of thing, because I don't think they have actually sued PLS Delaware, but maybe they did. I don't know. Hard to tell.

So I think the best way to approach this is just, as I said, file an amended complaint to make it clear that you're only suing PLS Canada, not PLS Delaware.

MS. WHEELER: Your Honor, can we do that after you decide the motion to dismiss for lack of jurisdiction?

I don't want to spend my one amendment, as of right, deleting four words from paragraph 21, until I see Your Honor's ruling on this motion.

THE COURT: That makes sense.

MS. WHEELER: Thank you.

MR. KORNFELD: That is all we have, Your Honor.

THE COURT: Okay. Thank you.

Anything else from the debtors today?

MR. LANDIS: Not today, Judge, thank you.

And, Your Honor, I'd just note that we did upload -- this is Adam Landis for the record -- we did upload that order in connection with Item 11, so it'll be waiting for your signature anytime.

THE COURT: All right. Thank you all very much.

We're adjourned.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 5:19 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling November 16, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams November 16, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski November 16, 2023
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable